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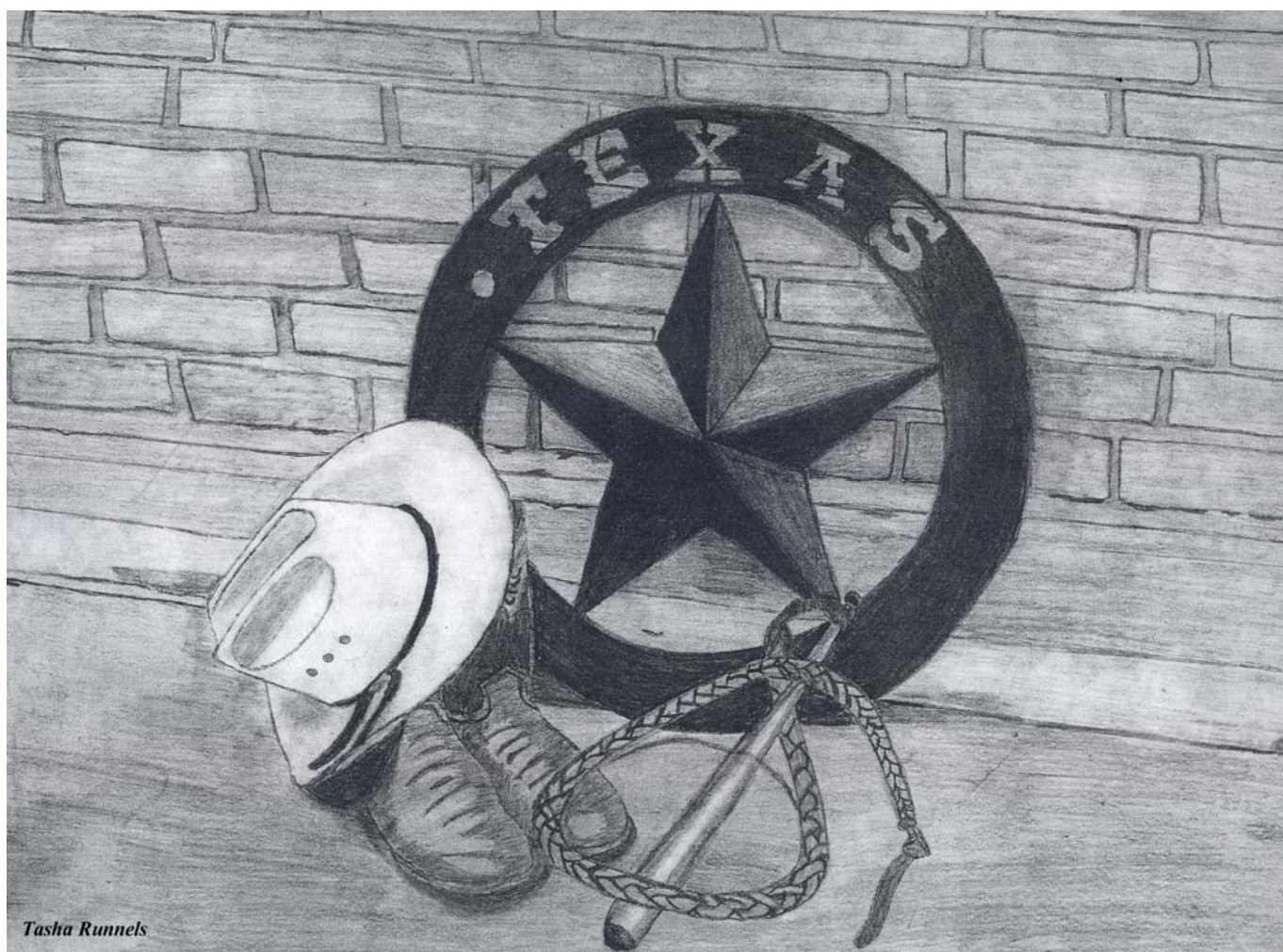
# TEXAS REGISTER

*Volume 33 Number 45*

*November 7, 2008*

*Pages 9007 – 9148*

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for October 22, 2008

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2013, Joseph Robert McCartt of Amarillo (replacing David Dalzell of Abilene whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2013, Kathleen Owen of Pipe Creek (replacing Tom Gann of Lufkin whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2013, Mona Bailey of N. Richland Hills (replacing Douglas Schwartz of El Paso whose term expired).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2009, Scott Boxer of Frisco (replacing John Goodman of Houston whose term expired).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2009, Mark L. Rhea of Fort Worth (Mr. Rhea is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2009, L. Elizabeth Gunter of Austin (Ms. Gunter is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2011, Kenneth Pelt of Kountze (replacing Sandy Dasgupta of Lubbock whose term expired).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2011, Danny Perkins of Houston (replacing Naomi Lede of Huntsville whose term expired).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for a term to expire August 31, 2013, Rita Hortenstine of Dallas (replacing Charlene Evans of Harlingen whose term expired).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for a term to expire August 31, 2013, Carolyn Frazier of Huffman (replacing Davie Johnson of El Paso whose term expired).

### Appointments for October 27, 2008

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2009, Joyce Taylor of Houston (replacing Edward Adams of Austin who is deceased).

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2009, Linda Foster of Midland (replacing Sandra Thomas of Dallas who resigned).

Appointed as Presiding Officer of the Grayson County Regional Mobility Authority for a term to expire February 1, 2010, Raymond Jerdy Gary of Denison (Mr. Gary is being reappointed).

Rick Perry, Governor

TRD-200805700



## Proclamation 41-3167

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, on March 2, 2007, the Legislative Audit Committee met pursuant to Texas Government Code Sec. 2104.021 and found that gross fiscal mismanagement existed at the Texas Youth Commission ("TYC") and I placed the agency into conservatorship; and

WHEREAS, I appointed a Conservator to investigate all matters relating to mismanagement of TYC; and

WHEREAS, TYC was required to develop reform and rehabilitation plans to ensure the agency complies with state fiscal management policies and has implemented these plans; and

WHEREAS the Conservator of TYC has found that the conditions that prompted the agency to be placed in conservatorship have been remedied and that the requirements of Senate Bill No. 103, 80th Texas Legislature, the TYC reform bill, are being observed, as are various provisions of the General Appropriations Act, which provide guidelines to reform the commission;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by virtue of the power vested in me by the Constitution and laws of this state, do hereby declare that fiscal management issues at TYC have been remedied, confidence has been restored in agency operations and TYC is no longer under conservatorship.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 14th day of October, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200805701



# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Opinions

### Opinion No. GA-0673

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Government Code chapter 552, the Public Information Act, prohibits the disclosure of a vehicle identification number if the number is not accompanied by or identified with any personal information about any individual (RQ-0704-GA)

### S U M M A R Y

Government Code section 552.130(a) does not prohibit a governmental body from publicly disclosing a manufacturer's permanent vehicle identification number ("VIN"), if the VIN is not accompanied by or identified with any personal information about any individual.

### Opinion No. GA-0674

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether section 1355.004(b)(2) of the Insurance Code requires group health plans that provide more than 60 outpatient visits for physical illnesses to provide the same number of visits for serious mental illnesses (RQ-0695-GA)

### S U M M A R Y

Section 1355.004(a)(1)(B) of the Insurance Code requires a group health benefit plan to provide coverage, based on medical necessity, for not less than 60 visits per year for outpatient treatment of serious mental illness. Section 1355.004(b)(2) requires coverage for an outpatient visit described in subsection (a)(1)(B) on the same terms as for physical illness. Group health plans that provide more than 60 outpatient visits for physical illnesses must accordingly provide the same number of visits for serious mental illnesses.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200805714

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: October 29, 2008

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER C. GRANT POLICIES

##### DIVISION 1. GENERAL GRANT GUIDELINES

###### 13 TAC §§2.190 - 2.195

The Texas State Library and Archives Commission (Commission) adopts on an emergency basis new 13 TAC §§2.190 - 2.195. These sections establish the guidelines for the administration of a new grant program for Texas public libraries, school libraries, and academic libraries, Texas Responds Grants, with the purpose of assisting local communities to provide library services to those affected by Hurricane Ike and its aftermath. These sections set forth the general terms, conditions, criteria, and decision-making process for awarding these grants. Grants will aid local Texas communities to provide, on an expedited basis, valuable information and library services for those affected by this disaster.

The new rules are adopted on an emergency basis to ensure that grant funding can be awarded to libraries with the least delay and inefficiency. Without the adoption of the new rules on an emergency basis, the grant funds could not fully, efficiently, or effectively reach the impacted communities.

These new rules are adopted on an emergency basis under the authority of Government Code §441.0091, concerning the Grant Program for Local Libraries, that provides the Commission authority to provide for grants to meet specific information needs of residents and specific needs of local libraries, and to adopt by rule the guidelines for awarding grants.

The authority to expedite the grant review and approval process is the September 8, 2008 proclamation of Governor Rick Perry, and any subsequent renewals or amended proclamations regarding this disaster.

###### §2.190. Goals and Purposes.

This grant program provides funds to public, school, and academic libraries that have been damaged by Hurricane Ike and its aftermath. The grants are to assist Texas communities in which library services have been significantly disrupted by this disaster. Programs involving collaboration with other community organizations are encouraged. The director and librarian may designate specific funding priorities for grants, in response to identified needs. Because of the need for rapid assistance, commission staff will conduct an expedited grant application, review and awarding process.

###### §2.191. Eligible Applicants.

The governing authority of a Texas community is eligible to apply for a grant to assist it in providing public library services to people affected by this disaster. In addition, school libraries and academic libraries are eligible to apply for grants. All grant applicants must have sustained damaged from the disaster and must be located in counties declared disaster areas by the Governor. To receive a grant, public libraries must be members of the Texas Library System in State Fiscal Year 2009.

###### §2.192. Eligible Expenses.

(a) This grant program will fund operating expenditures such as supplies, library materials, equipment, furniture, and contractual services. To be eligible, grant expenses must be reasonable and in accordance with appropriate state or local operating policies and procedures. Further, all grant expenses must be designed to respond directly to this disaster.

(b) This grant program will not fund the following:

- (1) Capital expenditures related to the purchase of real property, buildings, or motor vehicles;
- (2) Capital expenditures related to the construction or expansion of facilities;
- (3) Capital expenditures related to renovation costs;
- (4) Other expenditures not allowed by the Uniform Grant and Contract Management Act (Government Code Chapter 783);
- (5) Food, beverages, gifts, prizes;
- (6) Equipment or technology not specifically needed for the disaster-related services or programs;
- (7) Collection development projects not specifically associated with the disaster-related services or programs;
- (8) Advertising or public relations costs not directly related with promoting disaster-related activities;
- (9) Entertainment expenses (e.g., performers) not directly related to disaster-related services or programs;
- (10) Transportation/travel for program participants;
- (11) Indirect costs, administrative overhead, or other non-library service costs; or
- (12) Staffing or fringe benefit costs.

###### §2.193. Criteria for Award.

Applications will be evaluated based on the following criteria:

- (1) Needs Assessment. Describe how the library and its services were impacted by this disaster. Describe the library service area, the needs of the library, and anticipated outcomes. Describe the damage done by this disaster. (50 points)
- (2) Program description. Provide a detailed description of the materials, services, and/or activities to be funded. (25 points)

(3) Budget. Provide a detailed budget. All budget items must clearly relate to the grant project as described. (25 points)

§2.194. Grant Review and Award Process.

(a) Applicants may submit grant applications based on the program guidelines issued by the commission.

(b) Commission staff will review and score grants based on the criteria for award, under an expedited process.

(c) Applications with significant errors, omissions, or eligibility problems will not be scored.

(d) Applicants that are awarded full or partial funding by the director and librarian will receive the full approved grant award as quickly as possible, upon receipt of an executed contract.

(e) Commission staff may request additional information from applicants and may negotiate grant programs and awards with applicants as needed.

§2.195. Decision-making Process.

(a) The director and librarian will make all decisions regarding the funding of the applications.

(b) The State Library and Archives Commission will be informed of the funding decisions.

(c) At an open meeting, the State Library and Archives Commission may hold a public hearing to consider petitions of applicants that did not receive full funding.

(d) The commission or the director and librarian may award additional grants, based on the availability of funds.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805627

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective Date: October 27, 2008

Expiration Date: February 23, 2009

For further information, please call: (512) 463-5459

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 5. TEXAS FACILITIES COMMISSION

#### CHAPTER 116. PROPERTY MANAGEMENT DIVISION

##### SUBCHAPTER A. STATE OWNED PROPERTY

###### 1 TAC §116.14

The Texas Facilities Commission (the Commission) proposes new §116.14, concerning regulations of and specifications for the energy-saving devices required for vending machines.

###### Background.

During the 80th Regular Session, the Texas Legislature enacted House Bill 3693, which in part created new §2165.058 of the Texas Government Code. Section 2165.058 directs the Commission to require owners and operators of vending machines located in state-owned or state-leased buildings to utilize and maintain internal energy-savings devices. In the absence of such an internal device on an existing vending machine, §2165.058 authorizes the Commission to require that such machines employ an external device to accomplish the common goal of energy savings and energy management. The requirement for an external device is limited to those machines installed or operated under a contract with the Commission or another state agency on or after September 1, 2007. These requirements do not apply to vending machines containing perishable food products.

Texas Government Code, §2165.058 also gives the Commission the discretion to impose administrative fines for machines determined to not be in compliance with this statutory requirement or related rules of the Commission. Finally, §2165.058 further mandates that the Commission promulgate rules related to the specifications of the energy-saving devices required by this statute and regulation of such devices.

###### Section Summary.

New §116.14 defines terms, establishes acceptable specifications for new vending machines, and addresses the implementation of these requirements for existing vending machines. The new rule is proposed under the rulemaking authority granted to the Commission in Texas Government Code, §2165.058(f) (Vernon 2008).

###### Fiscal Note.

Edward L. Johnson, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for state or

local government as a result of enforcing or administering the proposed rule.

###### Public Benefit/Cost Note.

Mr. Johnson has also determined that for each year of the first five-year period the proposed rule is in effect, the public will benefit from clarification regarding acceptable specifications of the energy-saving devices required by this statute and regulation of such devices.

Mr. Johnson has also determined that there will be no effect on individuals or large, small, or micro-businesses as a result of the adoption of the proposed rule. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon 2008), are not required.

Mr. Johnson has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon 2008).

###### Request for Comments.

Written comments on the proposed rule may be submitted to Rules Coordinator, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us). For comments submitted electronically, please include "Vending Machines" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning this proposed new rule may be directed to Susan Maldonado, Assistant General Counsel, at (512) 463-3960.

###### Statutory Authority.

The new rule is proposed under §2165.058 of the Texas Government Code, which requires the Commission to adopt rules relating to the specifications for and regulation of mandatory energy-savings devices on certain vending machines located in state-owned or state-leased buildings.

###### Cross Reference to Statute.

The proposed rule affects §2165.058 of the Texas Government Code.

§116.14. Vending Machines; Mandatory Energy-Savings Devices.

###### (a) Definitions.

(1) "Energy Consumption" refers to the amount of energy a Vending Machine consumes.

(2) "Energy Star Program Requirements" refers to the Federal Energy Star Program Requirements for Refrigerated Beverage Vending Machines as designated by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

(3) "Existing Vending Machine" refers to a Vending Machine that, prior to September 1, 2007, was located in a building owned or leased by the State of Texas.

(4) "Low Power Mode" refers to the reduced power state of a Vending Machine during extended periods of inactivity.

(5) "Vending Machines" or "Refrigerated Beverage Vending Machines" refers to a self-contained system designed to accept consumer payments and dispense bottled, canned, and other sealed beverages at appropriate temperatures without outside labor intervention. This definition does not include a vending machine that contains a perishable food product, as defined by §96.001, Civil Practice and Remedies Code.

(b) Existing Vending Machines.

(1) Any entity that owns or operates an Existing Vending Machine is required to meet the Low Power Mode Federal Energy Star Program Requirements.

(2) Within five (5) years from the promulgation of these rules or ten (10) years from the manufacturing date of an Existing Vending Machine, whichever is later, any entity that owns or operates an Existing Vending Machine is required to replace it or retrofit it to meet both the energy consumption and Low Power Mode Federal Energy Star Program Requirements.

(c) Any entity that owns or operates a Vending Machine other than an Existing Vending Machine is required to meet both the Energy Consumption and Low Power Mode Federal Energy Star Program Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805599

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 463-7220



## CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

The Texas Facilities Commission (Commission) proposes amendments to §§126.1 - 126.4; and the repeal of §§126.5, 126.6, 126.20, and 126.21, concerning surplus and salvage property programs.

### Background.

During its rule review, published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7312), the Commission has reviewed and considered 1 TAC Chapter 126 for readoption, revision, or repeal in accordance with the Texas Government Code §2001.039 (Vernon 2008). The Commission determined

that 1 TAC §§126.1 - 126.4 are still necessary as these rules were promulgated to direct the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property either by the State agency that owns the subject property or by the Commission, on behalf of the State of Texas under Texas Government Code, Chapter 2175. Revisions to these rules, however, are required to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. In addition, the Commission proposes to repeal 1 TAC §§126.5, 126.6, 126.20, and 126.21 as the text provided the public no additional guidance or direction than that reflected in the governing statutes. Through a concurrent notice of an adopted rule review, the Commission readopts Texas Administrative Code, Title 1, Part 5, §§126.1 - 126.4 with amendments and repeals §§126.5, 126.6, 126.20, and 126.21. The amendments and repeal are proposed pursuant to the Commission's rulemaking authority found in Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

### Section by Section Summary.

Proposed revisions to existing rules are required to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. Section 126.1 defines terms used in the subchapter addressing state surplus and salvage property. Section 126.2 contains general terms and conditions related to the disposition of state surplus and salvage property, such as methods of disposal, notice of availability, priority for transfer to a state agency, disposition of data processing equipment, calculation of a purchaser's fee, delegation of authority by the Commission to a state agency, and compilation of a list of prospective buyers. Section 126.3 specifically addresses direct transfers of state surplus and salvage property to other state agencies, political subdivisions, or assistance organizations. Section 126.4 establishes rules for the disposition of state surplus and salvage property to the public through competitive sealed bids, live auctions, or direct sales either by the Commission or under authority delegated to a state agency by the Commission.

In addition, the Commission proposes to repeal §§126.5, 126.6, 126.20, and 126.21 as the text provides the public no additional guidance or direction than that reflected in the governing statutes. Section 126.5 directs the handling of proceeds from the disposition of state surplus and salvage property, and §126.6 addresses the purchase of certain chairs by elected or appointed officials or the executive head of a state agency. Section 126.20 defines terms used in Subchapter B related to federal surplus and salvage property. Section 126.21 directs the Commission to comply with federal law and regulation in the disposition of federal surplus and salvage property, reiterates Chapter 2175 provisions on cost recovery and handling of fees, and provides that federal surplus and salvage property not transferred to an eligible recipient by the Commission may then be sold at auction administered by the General Services Administration.

### Fiscal Note.

Edward L. Johnson, Executive Director, has determined that for each year of the first five-year period the proposed amendments and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

### Public Benefit/Cost Note.

Mr. Johnson has also determined that for each year of the first five-year period the proposed amendments and repeal are in effect the public benefit will be further clarification by updating the references to the Commission and correcting typographical errors, and ensuring consistency with governing statutes.

Mr. Johnson has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposal. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon 2008), are not required.

In addition, Mr. Johnson has determined that for each year of the first five-year period the proposed amendments and repeal are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon 2008).

#### Request for Comments.

Interested persons may submit written comments on the proposal to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us). For comments submitted electronically, please include "Proposed Surplus and Salvage Property Programs" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposal. Questions concerning the proposed amendments and repeal may be directed to Susan Maldonado, Assistant General Counsel, at (512) 463-3960.

## SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

### 1 TAC §§126.1 - 126.4

#### Statutory Authority.

The amendments are proposed under Texas Government Code §§2175.061(b) and (d), 2175.065(b), 2175.129(b), and 2175.186(b) (Vernon 2008).

#### Cross Reference to Statute.

The statutory provisions affected by the proposed amendments are those set forth in Chapter 2175 of the Texas Government Code.

#### §126.1. Definitions.

The following words and terms, when used in this subchapter ~~[chapter]~~, shall have the following meaning, unless the context clearly indicates otherwise.

##### (1) Assistance organization--

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals; or

(B) a nonprofit food bank that solicits, warehouses, and redistributes ~~[distributes]~~ edible but unmarketable food to an agency ~~[agencies]~~ that feeds ~~[feed]~~ needy families and individuals; or

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development; or

(D) a group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients; or

(E) a non profit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters; or

(F) ~~the [The]~~ Texas Boll Weevil Eradication Foundation Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under §74.1011, Agriculture Code; or

(G) a local workforce development board created under §2308.253 of the Texas Government Code; or

(H) a nonprofit computer bank that solicits, stores, refurbishes, and redistributes used computer equipment to public school students and their families; ~~or~~[-]

(I) a nonprofit organization that provides affordable housing.

(2) Certificate of Acquisition--A form prescribed by the commission that verifies the qualifications of a qualified assistance organization or political subdivision as an entity entitled to receive state surplus or salvage property.

##### (3) Commission--The Texas Facilities Commission (TFC).

(4) ~~[(3)]~~ Data processing equipment--Equipment described [as defined] by Texas Government Code, §2054.003(3)(A) as [to be] information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means to include[-]

~~[(A)]~~ central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

~~[(B)]~~ all related services, including feasibility studies, systems design, software development, and time-sharing services, provided by state employees or others; and

~~[(C)]~~ the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(5) ~~[(4)]~~ Personal property--Personal property that is lawfully confiscated and subject to disposal by a state agency ~~or that is~~[- Personal property] affixed to real property ~~[may be sold as surplus or salvage property]~~ if its removal and disposition is for a lawful purpose under Texas Government Code, Chapter 2175[- Subchapter C] or another law. This definition does not include property excepted by Texas Government Code, §2175.303.

(6) ~~[(5)]~~ Method of payment--A cashier's check, certified check, a money order, or any other approved method of purchase at the time of sale is acceptable payment under this chapter [section].

(7) ~~[(6)]~~ Political subdivision--Each political subdivision of the state, including counties, municipalities, and public school districts, and volunteer fire departments.

(8) ~~[(7)]~~ Salvage property--Any personal property ~~that~~ ~~[which]~~ through use, time, or accident is so ~~[depleted, worn out,]~~ damaged, used, or consumed that it has no value for the purpose for which it was originally intended. This definition does not include property excepted by Texas Government Code, §2175.303.

(9) [(8)] State agency--

(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council;

(C) the [Texas] Civil Air Patrol, Texas Wing; and

(D) excluding those entities in Texas Government Code, Chapter 2175, Subchapter F [§§2175.301, 2175.302, 2175.304].

(10) [(9)] Surplus property--Personal property that exceeds a state agency's needs and is not required for the agency's foreseeable needs; including used or new property that retains some usefulness for the purpose for which it was intended or for another purpose. This definition does not include property excepted by Texas Government Code, §2175.303.

§126.2. *General Terms and Conditions.*

General terms and conditions of this subchapter are as follows:

(1) Method of disposal. A state agency that determines that it has surplus property or salvage property shall inform the commission and the comptroller of the property's kind, number, location, condition, original cost or value, and date of acquisition. Additionally, based on the condition of the property, a state agency shall determine whether the property is:

(A) Surplus property that should be offered for transfer under §2175.125 of the Texas Government Code and §126.3 of this chapter [title] (relating to Direct Transfer, Priority, Reporting, and other Disposition); or

(B) Should be disposed of by competitive bidding, auction or direct sale under §126.4 of this chapter [title] (relating to Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale); or is

(C) Salvage property.

(D) A state agency making this determination shall inform the commission and the comptroller of its determination.

(2) Notice of availability. The commission shall maintain a list of current surplus or salvage property and inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists such property that is available for sale.

(3) Priority for transfer to state agency. During the ten (10) business days after property is posted on the comptroller's website, a transfer to another state agency has priority over any other type of transfer under this subchapter.

(4) Disposition of surplus or salvage data processing equipment. Surplus or salvage data processing equipment from state agencies, institutions or agencies of higher education, or eleemosynary institutions that is not disposed of pursuant to the Texas Government Code, §2175.125, §2175.184, or other law, shall be transferred by the state agency or institution to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, of the Education Code, to an assistance organization specified by the school district or to the Texas Department of Criminal Justice. An eleemosynary institution, state agency or an institution or agency of higher education may not collect a fee or other reimbursement from the district, the school, the assistance organization specified by the school district or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment. Pursuant to §2175.306, a state agency involved in health, human services or education, when disposing of state surplus

or salvage data processing equipment, shall give a preference to a public school, school district or assistance organization specified by the school district. Pursuant to Texas Government Code, §2175.305, the Secretary of State shall give preference to transferring surplus computer equipment to counties for the purpose of improving voter registration technology and complying [in compliance] with Texas [the] Election Code, §18.063.

(5) Purchaser's fee. The commission or agency disposing of surplus or salvage property under this subchapter shall assess and collect from the purchaser a fee over and above the proceeds from the sale of property, to recover the costs associated with the sale of property. The fee shall be set and reviewed annually by the commission and shall be at least two percent (2%) but not more than twelve percent (12%) of the sale proceeds. Property disposed of by direct transfer under §126.3 of this chapter [title (relating to Direct Transfer, Priority, Reporting, and other Disposition)] is not subject to the purchaser's fee.

(6) Delegation of authority to state agency. If a state agency demonstrates to the commission its ability to dispose of its own surplus or salvage property under Texas Government Code, Chapter 2175, Subchapters C and E [to the public] in a manner that results in cost savings to the state, the commission may authorize the agency to do so. The agency shall follow procedures provided by the commission at the time the delegation is granted and shall provide a report of the proceeds by assigned sale number no later than September 10th of each year for the prior fiscal year.

(A) Delegation of authority will be based on receipt of and concurrence by the commission of the agency's projection of cost savings to the state.

(B) Criteria used to delegate authority to a state agency demonstrating cost savings to the state may include information about the property such as age, condition, limited use, size, volume, expected return and/or location; information about the agency such as its ability to account for and report staffing, disposals, location, and/or specific knowledge about the property.

(7) Delegation of deletion authority to state agencies. The commission hereby delegates to state agencies the authority to delete surplus or salvage property from the State Property Accounting System after any method of disposition listed under this subchapter.

(8) Firearms. The purchaser of a surplus firearm must be a licensed firearm dealer.

(9) Rejection of bids. The state reserves the right to reject any bid or part of a bid, and or waive minor technicalities.

(10) List of buyers. The commission shall maintain an annually updated list of qualified buyers of surplus and salvage property. The commission shall renew annually a list it maintains of

(A) Assistance organizations and individuals responsible for purchasing for political subdivisions who have requested information regarding available state surplus or salvage property; and

(B) Other prospective buyers of surplus and salvage property.

(C) Names may be deleted from lists maintained by the commission for failure to bid, failure to make a payment or failure to remove awarded items.

(D) A buyer who has been removed from the buyers list for failure to make a payment or to remove surplus or salvage property may not be reinstated to the list until a written request has been presented to and approved by the commission.

§126.3. *Direct Transfer, Priority, Reporting, and Other Disposition.*

(a) Disposition of state surplus and salvage property by direct transfer. During the ten (10) business days after surplus or salvage property is posted on the Comptroller's website, a state agency, political subdivision, or assistance organization may coordinate directly with the reporting state agency for a transfer of property at a price established by the reporting agency.

(b) Priority of claim.

(1) The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of ten (10) business days shall be entitled to the property provided, however, a state agency shall have first priority over all other entities.

(2) In the event two competing and equivalent requests are received from parties of equal standing the commission in coordination with the reporting agency shall award the property in the best interests of the state and the reporting agency. Two or more requests shall be considered "competing and equivalent" for purposes of this rule if each meets the price established by the reporting state agency on the same business day, and within the ten (10) business day period following posting on the comptroller's website.

(c) Reporting requirements.

(1) Reporting by state agencies. If a transfer is made to a state agency, the participating agencies shall report the transaction to the comptroller as provided by law. The comptroller shall, if necessary, ~~then~~ debit and credit the proper appropriations within the systems maintained by the comptroller.

(2) Reporting by other entities. A political subdivision or assistance organization acquiring surplus or salvage property from a state agency must in conjunction with the state agency complete a "Certificate of Acquisition". A political subdivision or assistance organization must certify its qualification and an assistance organization must additionally provide documentation as required. "Certificate of Acquisition" is to be retained by the state agency and documentation of the transaction is to be entered into the Comptroller's State Property Accounting System.

(d) Other disposition. If a direct transfer of the property is not arranged within ten (10) business days after the posting of the property on the comptroller's website in subsection (a) of this section, the commission shall, with the exception of data processing equipment, dispose of the surplus or salvage property to the public in accordance with §126.4 of this chapter [title] (relating to Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale).

*§126.4. Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale.*

(a) Generally. If no state agency, political subdivision, or assistance organization desires to receive any property reported as surplus or salvage, TFC shall ~~[the TBPC may]~~ dispose of the property, with the exception of data processing equipment, in a method that is most advantageous to the state and the reporting agency under the circumstances.

(1) Disposal. Property not disposed of under §126.3 of this chapter [title] (relating to Direct Transfer, Priority, Reporting, and other Disposition) shall ~~[may]~~ be disposed of by sealed bids, auction, or direct sale to the public, including a sale using an internet auction site.

(2) Method of Sale. TFC ~~[The TBPC]~~ will consider the following criteria for determining the method of sale for surplus and salvage property:

(A) geographic location;

(B) cost of transportation if applicable;

(C) sales history for similar property;

(D) type of property; and

(E) condition of property.

(3) Delegation of disposal authority. TFC ~~[The TBPC]~~ may delegate its authority to dispose of property not disposed of under §126.3 of this chapter [title (relating to Direct Transfer, Priority, Reporting, and other Disposition)] to a state agency having possession of the property by any method listed in subsection (a)(1) of this section, so long as the method of sale chosen results in cost savings [is most advantageous] to the state under the circumstances, and the delegation is approved by TFC ~~[the TBPC]~~. Any delegation under this section shall be subject to the procedures and reporting requirements in §126.2(6) of this chapter [title] (relating to General Terms and Conditions).

(4) Requirement to advertise. If the value of any property to be disposed of under this section is estimated to be worth more than \$5,000, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity in which the property is located.

(b) Disposition by competitive sealed bids. Sealed bids will be handled in accordance with 34 TAC §20.35 ~~[\$113.5 of this title]~~ (relating to Bid Submission, Bid Opening, and Tabulation).

(1) Bid deposits. When a bid deposit is required, the deposit must be in the amount specified in the bid invitation. Only the following will be considered as meeting the bid deposit requirements: a cashier's check, a certified check, a money order, or cash in the amount specified in the bid invitation. Failure to include a bid deposit in the proper amount will automatically disqualify a bid.

(2) Notice of award. TFC ~~[The TBPC]~~ will notify the successful bidder or bidders, on a sealed bid sale of surplus or salvage property, that an award has been made to them and specify a period of time for payment. In the event that a successful bidder fails to make payment within the specified time, TFC ~~[the TBPC]~~ may retain the bid deposit and consider it forfeited. Furthermore, the bidder forfeits his rights to the property and ownership of the property remains with the state.

(3) Transfer of property and forfeiture. When a successful bidder has paid the full amount due for the purchase of surplus or salvage property obtained through a sealed bid sale, TFC ~~[the TBPC]~~ shall notify both the successful bidder and the agency holding the title of the surplus or salvage and authorize the transfer of possession. In the case of vehicles or other items which require title transfer, it shall be the responsibility of the agency holding title to complete the transfer of title to the successful bidder. In the event a bidder pays for the property but fails to remove the property within the time specified, the bidder forfeits his rights to the property and ownership of the property reverts to the state.

(c) Disposition by live auctions. Surplus or salvage sold through the live auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of TFC ~~[the TBPC]~~ that the purchaser has in good faith complied with the conditions of the sale. In the case of vehicles or other items carrying titles, the agency holding the original title shall be responsible for the transfer to the successful bidder. In the event that a successful bidder fails to make payment or remove the property within the specified time, the bidder forfeits his rights to the property and ownership of the property remains with the state.

(d) Disposition by direct sale to the public.

(1) Generally. If TFC [~~the TBPC~~] or a state agency which has been delegated authority under subsection (a)(3) of this section or under §126.2(6) of this chapter, determines that selling the property by competitive sealed bid or auction, would not maximize the resale value of property to the state, TFC [~~the TBPC~~] or state agency may sell surplus or salvage property directly to the public.

(2) Fixed price. TFC [~~The TBPC~~], in cooperation with the state agency that declared the property as salvage or surplus, or a state agency which has delegated authority under subsection (a)(3) of this section or under §126.2(6) of this chapter [title], shall set a fixed price for the property.

(3) Location and method of direct sales. Direct sales operations may be conducted at designated state facilities or warehouses approved by TFC [~~the TBPC~~] or by Internet auction.

(A) Access. The general public and assistance organizations will have equal access.

(B) Payment. A purchaser under this section must pay for the property by an approved method at the time sale and prior to obtaining possession or actual title to the property.

(C) Forfeiture. In the event a purchaser pays for property but fails to remove it with the time specified at sale, the purchaser forfeits any ownership rights and subsequently, ownership reverts to the state without recourse.

(D) Internet auction. TFC [~~The TBPC~~] may contract with one or more commercial Internet auction sites for sale of state surplus or salvage property. Property on the Internet auction site shall be posted for at least ten (10) calendar days.

(e) Disposition of property with no resale value (salvage). If TFC [~~the TBPC~~] or a state agency with delegated authority under subsection (a)(3) of this section or under §126.2(6) of this chapter [title (~~relating to General Terms and Conditions~~)] does not dispose of property under another method in this subchapter, and has advertised the property for sale and received no bids, or has determined that the property has no resale value, the agency may delete the property on the State Property Accounting System and dispose of the property in a manner that best serves the interests of the state in accordance with Texas Government [~~Gov't~~] Code, §2175.193.

(f) Purchaser's title. A purchaser of surplus or salvage property at a sale conducted under this section obtains good title to the property if the purchaser in good faith has complied with all the terms and conditions of the sale and all applicable Commission rules.

(g) Reporting of sale.

(1) On a sale by TFC [~~the TBPC~~] of any property under this section, TFC [~~the TBPC~~] shall report the property sold and the sales price to the agency that declared the property surplus or salvage.

(2) TFC [~~The TBPC~~] or a state agency with delegated authority under this subchapter shall report the sale and the amount of the sale proceeds to the comptroller. The comptroller by law shall remove the property from the State Property Accounting System.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805621

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 463-7220



## 1 TAC §126.5, §126.6

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Facilities Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority.

The repeal is proposed under Texas Government Code §§2175.061(b) and (d), 2175.065(b), 2175.129(b), and 2175.186(b) (Vernon 2008).

### Cross Reference to Statute.

The statutory provisions affected by the proposed repeal are those set forth in Chapter 2175 of the Texas Government Code.

§126.5. *Proceeds.*

§126.6. *Purchase of Chairs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805633

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 463-7220



## SUBCHAPTER B. FEDERAL SURPLUS AND SALVAGE PROPERTY

### 1 TAC §126.20, §126.21

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Facilities Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority.

The repeal is proposed under Texas Government Code §§2175.061(b) and (d), 2175.065(b), 2175.129(b), and 2175.186(b) (Vernon 2008).

### Cross Reference to Statute.

The statutory provisions affected by the proposed repeal are those set forth in Chapter 2175 of the Texas Government Code.

§126.20. *Definitions.*

§126.21. *Donation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.



Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805622

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 463-7220



## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

##### SUBCHAPTER A. GENERAL RULES

###### 7 TAC §91.121

The Credit Union Commission proposes a new §91.121 concerning complaint notification. The proposed new rule adds requirements for credit unions to provide notice describing the process for filing complaints, including placing the notice on its website and giving the notice to members with the privacy notice or when the member joins the credit union. The new rule has been moved from Chapter 97 to Chapter 91.

The new rule is proposed as a result of recommendations from the Sunset Commission staff.

Betsy Loar, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under §15.409, which authorizes the Commission to establish methods for notifying consumers and members how to direct complaints to the Department.

The specific section affected by the proposed rule is Texas Finance Code, §15.409.

§91.121. Complaint Notification.

###### (a) Definitions

(1) "Privacy notice" means any notice which a credit union gives regarding a member's right to privacy, regardless of whether it is required by a state or federal law or given voluntarily.

(2) For purposes of subsection (b) of this section and unless the context reads otherwise, "notice" means a complaint notification in the form set forth in subsection (b)(1) of this section.

###### (b) Required Notice.

(1) Credit unions must provide their members with the following notice describing the process for filing complaints: This credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. Any member wishing to file a complaint against the credit union should contact the Texas Credit Union Department through one of the means indicated below: In person or by U.S. Mail: 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Fax Number: (512) 832-0278, E-mail: [complaints@tcud.state.tx.us](mailto:complaints@tcud.state.tx.us), Website: [www.tcud.state.tx.us](http://www.tcud.state.tx.us).

(2) The credit union must provide the notice as follows:

(A) In each office where a credit union typically conducts business on a face-to-face basis, the notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) The notice must be included with each privacy notice the credit union gives or sends to its members.

(C) If a credit union maintains a website, it must include the notice or a link to the notice in a reasonably conspicuous place on the website.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805636

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 837-9236



### SUBCHAPTER B. ORGANIZATION PROCEDURES

###### 7 TAC §91.208

The Credit Union Commission proposes new §91.208, concerning Notice of Known or Suspected Criminal Violations. The new rule carves out from existing §91.209 the requirement that a credit union notify the Department of any known or suspected criminal violation. The separate rule makes the requirement more visible to credit unions and also limits the reporting require-

ment to violations that could affect the safety and soundness of the credit union.

The new rule is proposed as a result of determining that §91.209 is overly broad.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the proposed new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403, which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the proposed rule is Texas Finance Code, §15.403.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to enhance the discovery, appropriate investigation, and reporting of theft, embezzlement and other similar types of criminal activity involving or affecting the credit union. Within 30 calendar days of determining that there is a known or suspected criminal violation of applicable State or Federal law affecting its assets or operations, the credit union shall provide notice to the Department of the criminal activity. This includes circumstances where the credit union knows or suspects an employee, officer, or director is involved in criminal activity, misapplication, or other defalcation of property or funds.

(b) A credit union may meet the reporting requirements of this section by providing the Department with a copy of the Suspicious Activity Report required to be filed with an agency of the federal government.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## 7 TAC §91.209

The Credit Union Commission proposes amendments to §91.209, concerning reports and charges for late filing. The proposed amendments to §91.209 remove subsection (b) which has been moved to and expanded in proposed new §91.208.

The amendment is proposed as a result of the proposed new §91.208.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403 which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.403.

§91.209. Reports and Charges for Late Filing.

(a) A credit union shall prepare and forward to the Department any report or other document that the Commissioner or this rule requires and will comply with all instructions relating to completing and submitting the report or document. For the purposes of this Section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing and must specifically advise the credit union that the provisions of this Section apply to the request.

~~[(b) Every credit union shall within ten (10) days after knowledge thereof report:]~~

~~[(1) The occurrence of any crime or suspected crime at any of the credit union's offices that requires the credit union to file a Suspicious Activity Report in accordance with federal regulations. This will include the discharge of any employee where the reason for such action was related to a crime or suspected crime; and]~~

~~[(2) The occurrence of any catastrophic act at any of the credit union's offices.]~~

(b) ~~[(e)]~~ A credit union may meet the reporting requirements of this subsection by providing the Department a copy of an applicable form required to be filed with an agency of the federal government or in any other manner acceptable to the commissioner.

(c) ~~[(d)]~~ If a credit union fails to file a report or provide a document within the timeframe specified in the instruction and after notice of non-receipt, the commissioner may assess a charge for the late fil-

ing of \$100 per day. The credit union shall pay the late charge to the department within thirty days of the assessment.

(d) ~~[(e)]~~ If a credit union fails to file a report or provide the requested information within the specified time, the commissioner or any person designated by the commissioner may examine the books, accounts and records of the credit union, prepare the report or gather the information and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200805642

Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## SUBCHAPTER G. LENDING POWERS

### 7 TAC §91.704

The Credit Union Commission proposes amendments to §91.704 concerning real estate lending. The amendments emphasize the requirement that credit unions must have appropriate policies in place before beginning real estate lending. The amendments also correct an inadvertent reduction in the regulatory loan-to-value limit for purchase money second mortgage loans. Finally, the amendments also clarify the loan-to-value limits that apply to the property collateralizing the loan and specify that unfunded commitments and lines of credit must be included in the calculation of the sums borrowed.

The amendments to the rule are proposed to clarify the rule and eliminate discrepancies with other rules.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the proposed rule. There is no economic cost anticipated to credit unions or individuals for complying with the proposed amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to

adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which concerns loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

#### §91.704. Real Estate Lending.

(a) (No change.)

(b) Written Policies [Procedures]. Before [A credit union, before] engaging in any real estate lending, a credit union shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, [activity, shall establish,] in addition to the general requirements of §91.701(c) of this title (relating to Lending Powers), [loan administration procedures that] address the following, as applicable:

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish their own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) - (C) (No change.)

(D) [First lien:] Owner [owner]-occupied residential real estate (other than home equity)--Loan to value limit 95%

(E) [First lien:] Other [other] residential real estate such as a second or vacation home--Loan to value limit 90%

(F) - (G) (No change.)

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan-to-value ratio, a credit union shall include the aggregate [total] amount of all sums borrowed including the outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure [secured by other liens on the real property securing or being improved by] the loan.

(d) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236

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## SUBCHAPTER H. INVESTMENTS

### 7 TAC §91.801

The Credit Union Commission proposes amendments to §91.801, concerning investments in credit union service organizations (CUSOs). The proposed amendments clarify the limit on the amount that may be invested in any one CUSO, as well as limiting the aggregate total of the loans to and investments in all CUSOs to 10% of the total assets of the credit union.

The amendments are proposed to clarify the language of the rule and to limit for safety and soundness reasons the amount a credit union has at risk in a CUSO.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amendments to the rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorize the Commission to establish rules for investments.

The specific sections affected by the proposed amended rule are Texas Finance Code, §124.351 and §124.352.

*§91.801. Investments in Credit Union Service Organizations.*

(a) - (c) (No change.)

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall establish, in writing, the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. The [This] maximum amount invested in any one CUSO may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs will be measured consistent with generally accepted accounting principles (GAAP) and shall not, in the aggregate, exceed [the greater of] 10% of the total unconsolidated assets [or 100% of net worth] of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations set forth in this section.

(e) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

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## CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §97.106

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Credit Union Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Credit Union Commission proposes to repeal existing §97.106, concerning complaint notice. The rule is being replaced by new §91.121 which sets out additional ways credit unions must notify members how they may file a complaint with the Department.

The repeal of the rule is proposed as a result of the Department's proposal of a replacement rule in Chapter 91.

Betsy Loar, General Counsel, has determined that for the first five year period the rule is repealed there will be no fiscal implications for state or local government as a result of repealing the rule.

Ms. Loar has also determined that for each year of the first five years the rule is repealed, the public benefits anticipated as a result of repealing the rule will be ease of use by credit unions and the public with the new rule replacing the repealed rule. There is no anticipated effect on small businesses as a result of repealing the rule. There is no economic cost anticipated to credit unions or individuals for repealing the rule.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 16, 2009 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The repeal is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under §15.409, which authorizes the Commission to establish methods for notifying consumers and members how to file a complaint with the Department.

The specific section affected by the proposed repeal is Texas Finance Code, §15.409.

§97.106. *Complaint Notice.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER C. GRANT POLICIES

The Texas State Library and Archives Commission proposes to amend §§2.111, 2.117, 2.310, 2.312, 2.410, 2.412, 2.610, 2.612, and 2.712 relating to grant policies and procedures for the management of grants distributed or administered by the agency. The amendments are being proposed to clarify the intent and purposes of the grants and the grant review process.

Deborah Littrell, director of Library Development Division, has determined that for each year of the first five years after the amended sections, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amended rules. The public benefit of the proposed amended rules is that they will help clarify the standardized policies and procedures for numerous grant programs. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the rules.

Written comments on the proposed rules may be submitted to Deborah Littrell, Texas State Library, Box 12927, Austin, Texas 78711; or dlittrell@tsl.state.tx.us; or by fax to (512) 463-8800.

#### DIVISION 1. GENERAL GRANT GUIDELINES

##### 13 TAC §2.111, §2.117

The amended sections are proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

##### §2.111. *General Selection Criteria.*

- (a) (No change.)
- (b) The general selection [~~award~~] criteria include:
  - (1) applicant eligibility;

- (2) relevance to goals;
- (3) program [~~community~~] impact;
- (4) program scope and quality;
- (5) the cost of proposed service;
- (6) measurability of service impact; and
- (7) compliance with requirements.

- (c) (No change.)

##### §2.117. *Grant Review and Award Process.*

- (a) Agency staff will review each application for the following:

- (1) - (4) (No change.)
- (5) submission of all required forms; [~~and~~]
- (6) compliance with submission procedures and deadlines;

and[-]

- (7) relevance and appropriateness of the project design and activities to the purpose of the grant program.

(b) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff will also raise concerns regarding the relevance and appropriateness of the project design and activities to the purpose of the grant program. Staff comments will be sent to the review panel with the applications for consideration by the panel.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the panel.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated. Applications in which the project design and activities are not relevant and appropriate to the purpose of the grant program will be ineligible.

- (2) (No change.)

- (d) Applications will be scored using the following process:

- (1) - (2) (No change.)

(3) Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel. The panel members must make their own individual decisions regarding the applications. The panel may discuss applications but the panel's recommendations will be compiled from the individual assessments, not as the result of a collective decision or vote.

- (4) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200805623

Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
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For further information, please call: (512) 463-5459

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## DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

### 13 TAC §2.310, §2.312

The amended sections are proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

#### §2.310. *Goals and Purposes.*

(a) This grant ~~[program]~~ provides funds for programs that promote cooperative services for learning and access to information. Programs involving collaboration are encouraged. Programs must emphasize improved services by the library to its customers. Programs must involve a substantive level of cooperation with at least one other library that is a member of the TexShare Library Consortium or the Texas Library System. The purpose is not for collection development, or other activities primarily focused on the acquisition of library materials or resources.

(b) (No change.)

#### §2.312. *Criteria for Award.*

Proposals will be scored by peer reviewers on eight [seven] criteria. The maximum points for each criterion is shown. Those projects which initiate or expand the sharing of library materials using a shared library automation system will receive up to 10 additional points. If the project is to implement or expand a shared library automation system, that system must implement a Z39.50 server, or a "Search and Retrieval by URL" (SRU) server.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Project impact. (15 points) Applicants describe the impact their project will have on library services and users locally, as well as regionally or statewide. This may include how the proposed project is a model program that would benefit other communities.

(4) ~~[(3)]~~ Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(5) ~~[(4)]~~ Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how the staff will be hired and trained in time to carry out the services as planned.

(6) ~~[(5)]~~ Evaluation. (10 ~~[45]~~ points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(7) ~~[(6)]~~ Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(8) ~~[(7)]~~ Sustainability. (10 ~~[45]~~ points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
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For further information, please call: (512) 463-5459

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## DIVISION 4. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

### 13 TAC §2.410, §2.412

The amended sections are proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

#### §2.410. *Goals and Purposes.*

(a) This grant program expands library services to all members of the library's community. It enables libraries to develop programs for populations with special needs. Programs involving collaboration are encouraged. Programs must emphasize improved services by the library to its customers. The purpose is not for collection development, or other activities primarily focused on the acquisition of library materials or resources.

(b) (No change.)

#### §2.412. *Criteria for Award.*

Proposals will be scored by peer reviewers on eight [seven] criteria. The maximum points for each criterion is shown.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Project impact. (15 points) Applicants describe the impact their project will have on library services and users locally, as well as regionally or statewide. This may include how the proposed project is a model program that would benefit other communities.

(4) [(3)] Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(5) [(4)] Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how the staff will be hired and trained in time to carry out the services as planned.

(6) [(5)] Evaluation. (10 [15] points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(7) [(6)] Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(8) [(7)] Sustainability. (10 [15] points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



## DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS

### 13 TAC §2.610, §2.612

The amended sections are proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

#### §2.610. Goals and purposes.

This grant may provide special funding for Texas Library Systems to assist library systems to plan and develop programs in which system member libraries collaborate and cooperate with other types of libraries in the region. These programs must meet one or more of the LSTA goals; in addition, some of the funds may be used to plan for adding other types of libraries to the membership of the system. The purpose is not for collection development, or other activities primarily focused on the acquisition of library materials or resources. [libraries in developing services for learning, access to information, and expanding library services to all members of the library's community. Programs involving collaboration are encouraged. Programs must address one or more LSTA purposes.]

#### §2.612. Criteria for Award.

Proposals will be scored by on eight [seven] criteria. The maximum points for each criterion is shown. Those projects which initiate or expand the sharing of library materials using a shared library automation system will receive up to 10 additional points. If the project is to implement or expand a shared library automation system, that system must implement a Z39.50 server, or a Search and Retrieval by URL (SRU) server.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Project impact. (15 points) Applicants describe the impact their project will have on library services and users regionally or statewide. This may include how the proposed project is a model program that would benefit other regions of the state.

(4) [(3)] Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(5) [(4)] Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how staff will be hired and trained in time to carry out the services as planned.

(6) [(5)] Evaluation. (10 [15] points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(7) [(6)] Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(8) [(7)] Sustainability. (10 [15] points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805645

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 463-5459



## DIVISION 7. TEXAS READS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

### 13 TAC §2.712

The amended section is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rule.

§2.712. *Criteria for Award.*

Proposals will be scored by peer reviewers on six criteria. The maximum points for each criterion is shown.

(1) Needs Assessment (20 [15] points). Describe why the program is needed in the community.

(2) Program purpose (20 [15] points). Describe the program goals, audience, outcomes, and relationship to the library long range plan or goals.

(3) Program design (20 [15] points). Provide a detailed description of the program and its activities.

(4) Timetable (10 [5] points). Provide a timetable of program activities.

(5) Evaluation plan (10 points). Describe how the anticipated outcomes will be measured.

(6) Budget (20 [15] points). Provide a detailed budget and justify budgeted costs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805646

Edward Seidenberg

Assistant State Librarian

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Earliest possible date of adoption: December 7, 2008

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## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

The Public Utility Commission of Texas (commission) proposes the repeal of §25.107, relating to Certification of Retail Electric Providers, and proposes new §25.107, relating to Certification of Retail Electric Providers. The proposed repeal and new rule will strengthen the certification requirements for retail electric providers (REPs) in order to better protect customers, transmission and distribution utilities (TDUs), and other REPs from the insolvency of REPs and other harmful conditions and activities of REPs. The repealed rule and new rule are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 35767 is assigned to this proceeding.

Mr. Neal Frederick, Financial Analyst, Rate Regulation Division, has determined that for each of the first five years the new rule is in effect, the enforcement and administration of the rule will not have fiscal implications or a foreseeable impact on the costs or revenues of state or local governments as a result of enforcing or administering the new section.

Mr. Frederick has also determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the rule will substantially outweigh any costs on persons required to comply with the rule. One of the rule's primary benefits is a reduced likelihood that a REP will become insolvent, which ultimately results in economic loss to other REPs, TDUs, and customers. One or more REPs defaulted on their obligations to the Electric Reliability Council of Texas (ERCOT) in 2003, 2005, 2007, and 2008, and the customers of those REPs had to be transferred to other REPs. Such defaults impose substantial costs on ERCOT, customers, and other market participants. Customers incur financial costs arising from the loss of deposits paid to the defaulting REP. Customers also lose the benefit of the bargain they reached with the defaulting REP and may pay higher prices for electricity under provider of last resort (POLR) or market rates. In addition, ERCOT, REPs serving



as POLRs, and TDUs incur administrative costs to execute a mass transition of the customers of the defaulting REP. TDUs also have financial losses arising from unpaid charges for delivery services provided to the defaulting REP. Finally, a REP default results in costs associated with unaccounted-for-energy (UFE) that are charged by ERCOT to the remaining REPs on a load-ratio basis.

Based on information gathered from market participants and other sources, Mr. Frederick estimates that defaults by six REPs in 2005 resulted in approximately \$7 million in losses arising from UFE costs to REPs and unpaid delivery charges to TDUs. This amount does not include the costs resulting from lost customer deposits, higher prices to customers for electricity under POLR or market prices, the administrative costs associated with the mass transition of customers, and unpaid charges from ERCOT, which Mr. Frederick was unable to quantify but which he believes are substantial. Five REPs defaulted in 2008. Based on an analysis similar to the analysis for 2005, Mr. Frederick estimates that the losses from UFE costs and unpaid TDU charges arising from four of those defaults totaled approximately \$4.4 million. In addition, approximately 26,000 customers were affected by three of those defaults.

The overall health and vibrancy of the retail market may also be damaged by REP defaults. Potential market entrants with strong credit may choose not to participate due to the risk caused by the financial instability of other market participants. Customers may also lose confidence in the health of certain REPs, or the competitive market in general, which could lead to a flight to a small number of financially strong REPs. The rule reduces these risks by requiring existing REPs and market entrants to have the minimum financial and technical qualifications necessary to prudently manage a REP.

The rule can be considered as not having an economic cost to persons required to comply with this rule because the rule sets forth minimum requirements necessary to operate a REP prudently. These minimum standards are similar to the state's minimum requirements for automobile liability insurance.

To the extent that the rule does impose economic costs to persons required to comply with the rule, they would likely include additional capital costs and the costs of acquiring additional services or personnel to prepare financial statements and provide risk management services. The estimated one-time cost necessary to meet the capital requirements of the rule ranges from \$0 (for REPs that already comply) to \$2.2 million. Based on experience gained by the commission since retail competition began in 2001, however, the commission has concluded that the public benefits anticipated as a result of enforcing this rule substantially outweigh the probable economic costs to persons required to comply.

As indicated above, because the rule sets forth minimum requirements necessary to operate a REP prudently, it can be considered to have no economic costs to, and no adverse effect on, persons required to comply with the rule. Nevertheless, Mr. Frederick has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code 2006.002. The commission has issued certificates to approximately 130 REPs. Approximately 30 of the 130 REPs (21%) are small or micro businesses. About half of the small and micro businesses are not currently serving customers. The small and micro businesses that are serving customers represent about \$25 million in combined annual revenues and about 0.53% of

annual ERCOT load. Mr. Frederick estimates that five REPs that qualify as small or micro businesses defaulted in 2008.

To the extent that the rule can be considered to have an adverse impact on REPs that qualify as small or micro businesses, the impact may depend on the ability of the small or micro business to obtain additional capital. Some of the small or micro businesses may not have the financial ability to maintain REP certification under the rule. To reduce these potential impacts on REPs, including small and micro businesses, the rule provides a period of time for REPs to establish compliance with the new financial requirements.

The commission considered alternatives to the rule such as adopting different financial standards for small and micro businesses or exempting small and micro businesses from some of the requirements. Based on experience gained by the commission since retail competition began in 2001, however, the commission concluded that these alternatives would jeopardize the public benefits of the rule arising from improved REP credit quality standards, stronger protections for customer deposits and TDU charges, better and more frequent financial reporting, and stronger managerial experience requirements. The commission has determined that the benefits accruing to the public from applying the rule to small and micro businesses will substantially outweigh any adverse economic impacts on small and micro businesses.

Mr. Frederick has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, December 30, 2008, beginning at 1:30 p.m. The request for a public hearing must be received within 30 days after publication of the rule.

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 35767.

Additionally, the commission solicits comments on the following questions regarding the protection of customer deposits in the event of a REP failure, including bankruptcy:

1. How can the commission protect customer deposits from a REP bankruptcy while still allowing the REP access to the deposits to cover nonpayment? Please provide specific language for a letter of credit, escrow agreement, or other instrument that would accomplish this purpose.
2. How should such a program be administered? For example, should the REP use its bank to hold and disburse customer deposits or should some other third party be used?

3. What mechanism would provide the most cost-effective means of protecting customer deposits in the event of a REP failure, including bankruptcy?

4. Given the current instability in the financial markets and the substantial differences in the collateral required for an (f)(1)(A) REP versus an (f)(1)(B) REP, does the rule adequately address what happens if a REP suddenly moves from one category to another as a result of a credit downgrade?

5. Will our POLR and/or disclosure rules obviate the need for certain provisions of this rule? If so, please discuss the provisions and the impact that the other rules will have on the competitive market, REPs, and their customers.

6. General rate case principles require TDUs to prove that an expense is reasonable and necessary, in order to recovery it. Is any additional language required in subsection (f)(3)(C) to make it clear what the TDU must prove in a rate case to obtain cost recovery of a regulatory asset related to REP bad debt?

7. Does PURA give the commission the authority to pre-approve the transfer of a REP certificate?

#### 16 TAC §25.107

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under PURA, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.352, which requires the commission to certify a person as a REP if the person demonstrates, among other things, the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet customer protection requirements and which requires a person applying for certification as a REP to comply with all customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and PURA; PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051 - 17.053, which authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: PURA §§14.002, 17.004, 17.051 - 17.053, 39.101, and 39.352.

§25.107. *Certification of Retail Electric Providers (REPs).*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805612

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 936-7223



#### 16 TAC §25.107

The new rule is proposed under PURA, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.352, which requires the commission to certify a person as a REP if the person demonstrates, among other things, the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet customer protection requirements and which requires a person applying for certification as a REP to comply with all customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and PURA; PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051 - 17.053, which authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: PURA §§14.002, 17.004, 17.051 - 17.053, 39.101, and 39.352.

§25.107. *Certification of Retail Electric Providers (REPs).*

(a) Applicability. This section applies to all persons who provide or seek to provide electric service to retail customers in an area in which customer choice is in effect and to retail customers participating in a customer choice pilot project authorized by the commission. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations, or to electric utilities providing service in an area where customer choice is not in effect. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP.

(1) A person must obtain a certificate pursuant to this subsection before purchasing, taking title to, or reselling electricity in order to provide retail electric service.

(2) A person who does not purchase, take title to, or resell electricity in order to provide electric service to a retail customer is not a REP and may perform a service for a REP without obtaining a certificate pursuant to this section.

(3) A REP that outsources retail electric functions remains responsible under commission rules for those functions.

(4) A REP may not own or operate generation assets.

(b) Definitions. The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:

(1) Continuous and reliable electric service--Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by unlawful or unjustified action or inaction of the REP.

(2) Customer--Any entity who has applied for, has been accepted for, or is receiving retail electric service from a REP for use on an end-use basis.

(3) Default--As defined in a transmission and distribution utility (TDU) tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement.

(4) Guarantor--A parent company or shareholder providing a guaranty agreement or corporate commitment or a financial institution providing a credit support agreement pursuant to this section.

(5) Investment Grade credit rating--A long-term unsecured credit rating of at least "Baa3" from Moody's Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or a comparable rating from any other nationally recognized rating agency.

(6) Liquid capital--Cash or cash equivalents, including cash that is readily available through a credit facility.

(7) Permanent employee--An individual that a REP intends to employ for at least six months starting from the time in question. A consultant is not a permanent employee.

(8) Person--Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.

(9) Principal--a person or a member of a group of persons that has significant control of the person in question.

(10) Retail electric provider--A person that sells electric energy to retail customers in this state. As provided in Public Utility Regulatory Act (PURA) §39.353(b), a REP is not an aggregator.

(11) Sanction--A finding in a commission final order that a REP violated PURA, a commission rule, or other law within the commission's jurisdiction.

(12) Tangible net worth--Total shareholder's equity less goodwill and other intangible assets.

(c) Application for REP certification.

(1) A person applying for certification as a REP must demonstrate its capability of complying with this section. A person who operates as a REP or who receives a certificate under this section shall maintain compliance with this section.

(2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an applicant's principal.

(3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether an application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.

(4) While an application for a certificate is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten days of any such change.

(5) Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving with modifications, an application within 90 days of the filing of the application.

(d) REP certification requirements. A person seeking certification under this section may apply to provide services under paragraph (1) or (2) of this subsection, and shall designate its election in the application.

(1) Option 1. This option is for a REP whose service offerings will be limited by geographic service area.

(A) An applicant must designate one of the following categories as its geographic service area:

(i) The geographic area of the entire state of Texas;

(ii) A specific geographic area (indicating the zip codes applicable to that area);

(iii) The service area of specific TDUs, TDUs or specific municipal utilities or electric cooperatives in which competition is offered; or

(iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.

(B) A REP with a geographic service area is subject to all subsections of this section, including those pertaining to basic, financial, technical and managerial, customer protection, and reporting and changing certification requirements.

(C) The commission shall grant a certificate to an applicant proposing to provide retail electric service to a geographic service area in Texas if it demonstrates that it meets the requirements of this section.

(D) The commission shall deny an application if the configuration of the proposed geographic area would discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other basis prohibited by law.

(2) Option 2. This option is for a REP whose service offerings will be limited to specific customers. A REP may offer service to specific customers, each of whom contracts for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the specified customers. The commission shall grant a certificate under this paragraph if the applicant demonstrates that it meets the requirements of this paragraph.

(A) A person seeking certification under this paragraph must file with the commission a signed, notarized affidavit from each

customer, with whom it has contracted to provide one megawatt or more of capacity. The affidavit must state that the customer is satisfied that the REP meets the standards prescribed by PURA §39.352(b)(1) - (3) and (c).

(B) The following subsections apply to REPs certified pursuant to this paragraph:

(i) Subsection (e) of this section, relating to basic requirements;

(ii) Subsection (f)(5) of this section, relating to billing and collection of transition charges; and

(iii) Subsection (i) of this section, relating to requirements for reporting and changing certification.

(e) Basic requirements.

(1) Names on certificates. All retail electric service shall be provided in the names under which the certificate was granted. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.

(A) No more than five assumed names may be authorized for use by any one REP at one time.

(B) Business names shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

(C) If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name shall not be used by the REP. An application shall be dismissed if an applicant does not provide at least one suitable name.

(2) Office requirements. A REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the REP's compliance with PURA and the commission's rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission staff may visit the office of a REP at any time during normal business hours on the same basis available to an electric customer. An applicant shall demonstrate that it has made arrangements for an office located in Texas.

(f) Financial requirements.

(1) Access to capital. A REP must meet the requirements of subparagraph (A) or (B) of this paragraph.

(A) A REP, its guarantor, or a REP and guarantor in combination electing to meet the requirements of this subparagraph must demonstrate and maintain:

(i) an investment-grade credit rating; or

(ii) tangible net worth greater than or equal to \$100 million, a minimum current ratio (current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60.

(B) A REP or its guarantor, or a REP and guarantor in combination electing to meet the requirements of this subparagraph must demonstrate and maintain:

(i) liquid capital not less than \$3 million;

(ii) liquid capital not less than \$2 million, provided that the REP has continuously served retail customers in the Texas retail market without sanction or default for at least two years, or

(iii) liquid capital not less than \$1 million, provided that the REP has continuously served retail customers in the Texas retail market without sanction or default for at least three years.

(C) A REP that obtained certification pursuant to this section before the effective date of this new rule and does not meet the requirements of either subparagraph (A) or (B) of this paragraph may continue to operate as a REP until six months after the effective date of this new rule. The REP shall notify the commission no later than six months after the effective date of this new rule that it cannot satisfy the financial requirements of either subparagraph (A) or (B) of this paragraph and cease operations pursuant to subsection (i)(7) of this section no later than 12 months after the effective date of this new rule. The REP shall meet all of the requirements of this section, other than subparagraphs (A) and (B) of this paragraph, and shall meet the requirements of repealed §25.107(f)(1) of this title (relating to Certification of Retail Electric Providers (REPs)) as it existed six months after the effective date of this new rule.

(2) Protection of customer deposits.

(A) A REP certified pursuant to paragraph (1)(A) of this subsection shall keep customer deposits in a restricted cash account or an escrow account, or provide an irrevocable stand-by letter of credit in an amount sufficient to cover 100% of the REPs outstanding customer deposits and advance payments at all times.

(B) A REP certified pursuant to paragraph (1)(B) of this subsection shall keep customer deposits in an escrow account or provide an irrevocable stand-by letter of credit in an amount sufficient to cover 100% of the REP's outstanding customer deposits and advance payments at all times.

(3) Protection of TDU financial integrity.

(A) A TDU shall not require a deposit from a REP certified pursuant to paragraph (1)(A) of this subsection except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges).

(B) A TDU may require a REP certified pursuant to paragraph (1)(B) of this subsection to provide security for payments of amounts billed. The size of the deposit, type of security, and other factors shall be prescribed by the TDU's tariff for retail delivery service.

(C) A TDU shall create a regulatory asset for bad debt expenses, net of collateral posted pursuant to subparagraph (B) of this paragraph, resulting from a REP's default on its obligation to pay delivery charges to the TDU.

(4) Financial documentation. Investment-grade credit ratings shall be documented by reports of a credit reporting agency.

(A) Tangible net worth shall be documented by audited financial statements for the most recent completed calendar or fiscal year, and unaudited financial statements for the most recent completed quarter. Audited financial statements shall include the accompanying notes and the independent auditor's report. Unaudited financial statements shall include the accompanying notes and the accountant's report stating that the unaudited financial statements have been prepared in accordance with generally accepted accounting principles.

(B) Liquid capital shall be documented by providing financial statements pursuant to subparagraph (A) of this paragraph, or

independent third party documentation of a REP's cash and equivalents, revolving credit facilities, or lines of credit, net of any pledges for collateral.

(C) Restricted cash accounts shall be documented by an account statement that clearly identifies the financial institution that manages the account and the account holder, and that clearly states that the account is a customer deposit account.

(D) Escrow accounts shall be documented by the current account statement and the escrow account agreement, which shall be executed using a standard form agreement approved by the commission.

(E) If a REP chooses to provide an irrevocable stand-by letter of credit to protect customer deposits, the irrevocable stand-by letter of credit must be issued by a financial institution rated "A3" or better by Moody's Investors' Service or "A-" or better by Standard & Poor's or Fitch, or with a comparable rating from any other nationally recognized rating agency. The REP shall use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must permit the commission's executive director to draw on the irrevocable stand-by letter of credit at such time that a mass transition of the REP's customers is carried out by ERCOT or any time thereafter, and permit a draw to be made in part or in full.

(F) A REP may rely on a guaranty agreement or corporate commitment from a parent company or shareholder holding a controlling interest in the REP, provided that the parent company or shareholder holding a controlling interest satisfies the capital requirements of paragraph (1) of this subsection. The REP shall use the standard form guaranty agreement approved by the commission. A REP may rely on a credit support agreement from a financial institution with a long-term unsecured credit rating of "A3" or better from Moody's Investors' Service or "A-" or better from Standard and Poor's or Fitch, or comparable rating agency, provided that the agreement irrevocably and unconditionally guarantees the payment of the REP's obligations to customers and TDUs.

(5) Billing and collection of transition charges. If a REP serves customers in the service area of a TDU that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with §25.108 of this title.

(g) Technical and managerial requirements. A REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, ERCOT protocols, and other applicable laws.

(1) Technical and managerial resource requirements include:

(A) Capability to comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other rules established by ERCOT or other applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, e-mail address, and postal address where the REP's staff can be directly reached at all times.

(B) Capability to comply with the registration and certification requirements of ERCOT or other applicable independent organization and its system rules, or contracts for services with entities registered with or certified by ERCOT or other applicable independent organization.

(C) Financial capability to purchase ancillary services as may be required by ERCOT or other applicable independent organization.

(D) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy).

(E) Principals or permanent employees in managerial positions whose combined experience in the competitive retail electric industry or competitive gas industry equals or exceeds 15 years. An individual that was a principal of a REP that had a default shall not be considered for purposes of satisfying this requirement.

(F) At least one principal or permanent employee who has five years of experience in commodity risk management of a substantial energy portfolio. Alternatively, the REP may provide documentation demonstrating that the REP has entered into a contract for a term not less than two years with a provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$100,000.

(G) Adequate staffing and employee training to meet all service level commitments.

(H) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.

(I) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(2) An applicant shall include the following in its initial application for REP certification:

(A) Prior experience of one or more of the applicant's principals or permanent employees in the competitive retail electric industry or competitive gas industry;

(B) Any complaint history, disciplinary record and compliance record during the 36 months immediately prior to the filing of the application regarding the applicant, the applicant's affiliates that provide utility services such as telecommunications, electric, gas, water, or cable service; the applicant's predecessors in interest, and the applicant's principals with any federal agency including the U.S. Securities and Exchange Commission, any self-regulated organization at which the applicant has conducted sales of stocks or other financial transactions, state public utility commissions, attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred. The commission may also consider any complaint information on file at the commission;

(C) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 36 months immediately preceding the application;

(D) A statement indicating whether the applicant, the applicant's predecessors in interest, or the applicant's principals are currently under investigation or have been penalized by an attorney

general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations;

(E) Disclosure of whether the applicant, the applicant's predecessors in interest, or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;

(F) An affidavit stating that the applicant will register with or be certified by ERCOT or other applicable independent organization and will comply with the technical and managerial requirements of this subsection; or that entities with whom the applicant has a contractual relationship are registered with or certified by the independent organization and will comply with all system rules established by the independent organization; and

(G) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.

(h) Customer protection requirements. A REP shall comply with all applicable customer protection requirements, including disclosure requirements, marketing guidelines and anti-discrimination requirements, and the requirements of this section.

(i) Requirements for reporting and changing certification. To maintain a REP certificate, a REP must keep its certification information up to date, pursuant to the following requirements:

(1) A REP shall notify the commission within 15 days of any change in its business address, telephone numbers, authorized contacts, or other contact information.

(2) A REP that demonstrates compliance with certification requirements of this section by submitting an affidavit shall supply information to the commission to show actual compliance with this section.

(3) A REP shall apply to amend its certification within ten days of a material change to the information provided as the basis for the commission's approval of the certification application. A REP may seek prior approval of a material change, including a change in control, by filing the amendment application before the occurrence of the material change. The transfer of a REP certificate is a material change.

(4) A REP shall notify the commission within three days of its violation of subsection (f)(1)(A) or (B) of this section. The commission staff may initiate a proceeding to address the violation.

(5) A REP shall file an annual report by April 1 each year reporting information for the preceding calendar year. A REP's first annual report is due in the year following the calendar year in which it is awarded a certificate regardless of whether the REP is serving customers. The annual report shall include the following information:

(A) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.

(B) For an Option 1 REP, identification of areas where the REP is providing retail electric service to customers in Texas compiled by zip code.

(C) Audited financial statements for the most recent completed calendar or fiscal year with accompanying footnotes and the independent auditor's report, and all documentation required by subsection (f)(4) of this section to demonstrate ongoing compliance with the financial requirements of subsection (f) of this section, including the amount of customer deposits and the balance of an account in which customer deposits are held.

(D) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.

(E) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.

(F) Changes in ownership, management, experience, and personnel relied on for certification.

(6) A REP shall file unaudited financial statements with accompanying footnotes and the review report or compilation letter from an independent auditor not later than 45 days after the close of the REP's fiscal quarter.

(7) A REP shall not cease operations as a REP without prior notice of at least 45 days to the commission, to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations, and to other affected persons, including the applicable independent organization, TDUs, electric cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be suspended. A REP must demonstrate compliance with certification requirements in order for the commission to reinstate the certificate. The commission may revoke a suspended certificate if it determines that the REP does not meet certification requirements.

(8) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within three days of this event and shall provide the commission a summary of the nature of the matter. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid obligations to customers or administrative penalties.

(9) All applications, reports, and notifications to the commission required by this section shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E of this title (relating to Pleadings and other Documents).

(10) A REP shall respond within three days to any commission staff request for additional information to confirm continued compliance with this section.

(i) Suspension and revocation. A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for a significant violation of PURA, commission rules, or rules adopted by an independent organization. A suspension of a REP certificate requires the cessation of all REP activities in the state of Texas associated with obtaining new customers. A revocation of a REP certificate requires the cessation of all REP activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for a significant violation of PURA, commission rules, or rules adopted by an independent organization. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a REP's certificate. Significant violations include the following:

(1) Providing false or misleading information to the commission;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;

(3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to customers pursuant to this section;

(6) Failure to maintain financial resources in accordance with subsection (f) of this section;

(7) Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;

(8) Failure to timely remit payment for invoiced charges to an independent organization;

(9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other rules established by the independent organization;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

(13) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;

(14) Failure to serve as a provider of last resort if required to do so by the commission;

(15) Providing retail electric service in an area in which customer choice is in effect without obtaining a certificate under this section; and

(16) Other significant violations, including the failure or a pattern of failures to meet the requirements of this section or other commission rules or orders.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805613

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 936-7223



## SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

### DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

#### 16 TAC §25.218

The Public Utility Commission of Texas (commission) proposes new §25.218, relating to the suspension of certain rules relating

to estimated meter readings. The proposed new rule will result in more accurate estimates of electric consumption and more accurate bills for customers for whom Hurricane Ike prevented meters from being read. The commission previously addressed this issue in its orders dated September 26, 2008 and October 10, 2008, suspending certain rules in response to the disaster resulting from Hurricane Ike. These orders were adopted pursuant to emergency disaster proclamations made by the Governor. A disaster declaration issued by the Governor on October 7, 2008 will expire on November 6, 2008. The commission's proposed new rule is required to extend the suspension of certain rules related to estimated meter readings until January 1, 2009 in order to adequately address the imminent peril to the health, safety and welfare caused by Hurricane Ike. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 36150 is assigned to this proceeding.

Shawnee Claiborn-Pinto, Director of Retail Markets, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Claiborn-Pinto has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be more accurate meter readings and electric bills for customers affected by Hurricane Ike. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Claiborn-Pinto has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 3:00 p.m. (CST) on Tuesday, November 18, 2008. The request for a public hearing must be received by noon on Monday, November 17, 2008.

The commission plans on adopting this rule on an emergency basis (with less than 30 days notice) pursuant to Texas Government Code §2001.034 (Vernon 2000 & Supp. 2008) and, for this reason, it is establishing a comment period of seven days after publication of the proposed rule in the *Texas Register*. Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than Friday, November 14, 2008. Sixteen copies of comments to the proposed rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 36150.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007

and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.001, which grants the commission the authority to adopt rules for determining the classification of customers and the applicability of rates; and PURA §39.203, which grants the commission the authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.001, and 39.203.

§25.218. Estimation of Electric Consumption for Certain Customers Affected by Hurricane Ike.

(a) Purpose. This section establishes safeguards to provide more accurate bills for customers whose electric consumption has been estimated following Hurricane Ike, by requiring that estimates of their consumption take into account periods when the customer was not taking service.

(b) Application. This section applies to a transmission and distribution utility that provides service in Harris, Galveston, Brazoria, or Chambers County and is subject to §25.214 of this title (relating to Terms and Conditions of Retail Electric Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) and the Pro Forma Delivery Tariff.

(c) Estimation following an actual meter reading. Notwithstanding §25.214 of this title and Section 4.8.1.4 of the Pro Forma Delivery Tariff, if a transmission and distribution utility obtains an actual meter reading for a customer following a period in which it has estimated consumption as a consequence of damage to utility or customer property from Hurricane Ike, the utility shall allocate any over- or under-estimated usage in a manner that takes into account periods that the customer was not likely to have been taking service.

(d) Effective date. This section is effective until January 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2008.

TRD-200805598

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 936-7223



## PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

### CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (commission) proposes to amend §33.23, relating to the surcharges assessed for permits and licenses issued by the commission. The commission also proposes to amend §33.25, relating to the implementation of two-year licenses and permits issued by the commission.

The proposed amendment to §33.23 deletes surcharges for out-of-state wine only package store permits. The surcharge for this permit is the same as the in-state wine only package store permit, so the separate permit type for out-of-state is deleted as unnecessary.

The proposed amendments to §33.25 also delete the out-of-state winery permit type from this section that relates to the implementation of two-year permits. In addition, the rule is amended to delete Forwarding Center Authority permits from subsection (d) of the rule, which is the list of permit types that will be issued two-year permits beginning on January 1, 2009, and adding the permit to subsection (e), which is the list of permit and license types that will be issued two-year permits beginning on September 1, 2009.

Charlie Kerr, Chief Financial Officer, has determined that for each fiscal year of the first five years the amended sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Mr. Kerr has determined that for each fiscal year of the first five years the amended sections are in effect, there will be no impact on local government as a result of the amendments.

Mr. Kerr has determined that for the first five years that proposed amendments are in effect, there will be no fiscal impact on small or micro-businesses.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years that the amendments are in effect, it is anticipated that the public will benefit because an unnecessary permit type is deleted and the Forwarding Center Authority permit will implement with the primary permits to which it is a subordinate.

Comments on the proposed amendments may be addressed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed amended rules in the *Texas Register*.

## SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

### 16 TAC §33.23

The proposed amendment to §33.23 is authorized by §5.50 of the Texas Alcoholic Beverage Code (code), which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule.

Cross Reference: Sections 5.31, 5.50, 11.09, and 61.03 of the Alcoholic Beverage Code and §35.6 of these rules are affected by the proposed amendments.

*§33.23. Alcoholic Beverage License and Permit Surcharges.*

(a) An annual surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against license and permit holders as follows:

Figure: 16 TAC §33.23(a)

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.



(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805619

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 206-3204



### 16 TAC §33.25

The proposed amendments to §33.25 are authorized by §§5.50, 11.09, and 61.03, which provide the commission with authority to issue a license or permit for a two-year term, and §35.6 of these rules, relating to Regional Forwarding Centers for Manufacturers.

Cross Reference: Sections 5.31, 5.50, 11.09, and 61.03 of the Alcoholic Beverage Code and §35.6 of these rules are affected by the proposed amendments.

*§33.25. Alcoholic Beverage License and Permit Fees and Surcharges.*

(a) This rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).

(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.

(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.  
Figure: 16 TAC §33.25(c) (No change.)

(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.

Figure: 16 TAC §33.25(d)

(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.

Figure: 16 TAC §33.25(e)

(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.  
Figure: 16 TAC §33.25(f) (No change.)

(g) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805620

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 206-3204



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 17. RESOURCE PLANNING SUBCHAPTER I. RULES APPLYING TO ENERGY SAVINGS PERFORMANCE CONTRACT PROJECTS

#### 19 TAC §17.80, §17.82

The Texas Higher Education Coordinating Board proposes amendments to §17.80 and §17.82, concerning rules applying to energy savings performance contract projects. Specifically, the proposed amendments will require the institutions chief financial officer and general counsel to certify that the guaranteed saving in the energy savings performance contract exceeds the costs and that the Texas Higher Education Coordinating Board staff review of the application for approval of the project includes a review of contract using guidelines to be established in cooperation with the State Energy Conservation Office.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, Texas Higher Education Coordinating Board, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or

local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more efficient Board operations relating to institution facility project approvals. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§61.027, 61.0572, 61.058, and 51.927.

The amendments affect Texas Education Code, §§61.0572, 61.058, and 51.927.

*§17.80. Projects Requiring Board Approval.*

Board approval is required before an institution enters into an energy savings performance contract as defined in Texas Education Code, §51.927. Energy Savings Performance Contract projects shall be evaluated under the provisions of §17.40 of this title (relating to Rules Applying to Repair and Renovation Projects). Additionally a review will be completed based on a set of guidelines to be developed in collaboration with the State Energy Conservation Office.

*§17.82. Additional Requirements.*

(a) (No change.)

(b) In addition to those outlined in §17.21 of this title (relating to Application Procedures), a statement shall be included with the application signed by the institutions chief financial officer and general counsel that certifies that they have reviewed the energy contract and that the costs do not exceed the guaranteed savings and that other legal provisions are in compliance with applicable laws and statutes.

(c) [(b)] The institution shall provide to the Board a copy of the signed contract within 30 days of the effective date of the contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805637

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 29, 2009

For further information, please call: (512) 427-6114



## **TITLE 22. EXAMINING BOARDS**

### **PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS**

#### **CHAPTER 571. LICENSING**

## **SUBCHAPTER A. EXAMINATION**

### **22 TAC §571.3**

The Texas Board of Veterinary Medical Examiners proposes an amendment to §571.3, regarding Eligibility for Examination and Licensure.

The proposed amendment corrects a typographical error in §571.3(d)(2)(C)(ii). The word "mush" is being replaced with the word "must," regarding the requirements of an applicant for the NAVLE who has not graduated from veterinary medical school. The rule requires submission of proof that an applicant has passed the English language proficiency tests required by the ECFVG or PAVE certification programs, in addition to the completion of all other requirements of the respective programs.

Dewey Helmcamp III, Executive Director of the Texas Board of Veterinary Medical Examiners, has determined that, for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to the state and local government, as a result of enforcing or administering the proposed rule, as it merely corrects a typographical error in a pre-existing rule.

Mr. Helmcamp, has also determined that, for each of the first five years that the proposed rule is in effect, the expected public benefit will be that an applicant for the NAVLE, who has not yet graduated from veterinary medical school will be required to submit proof that said applicant has passed the English language proficiency tests required by the ECFVG or PAVE certification programs, in addition to the completion of all other requirements of the respective programs.

Mr. Helmcamp has also determined that, for each of the first five years the proposed rule is in effect, there is no probable economic cost to persons required to comply with the rule, and the rule will have no effect on local employment or small businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

*§571.3. Eligibility for Examination and Licensure.*

(a) - (c) (No change.)

(d) Licensing Examination

(1) (No change.)

(2) Eligibility Prior to Graduation. Except as provided in subparagraph (C)(ii) of this paragraph, an applicant who has not graduated from veterinary medical school may sit for examinations provided the following conditions have been met:

(A) - (B) (No change.)

(C) To apply for the NAVLE, a candidate shall, at the time an application is submitted, demonstrate that the candidate is:

(i) (No change.)

(ii) a graduate of a school or college of veterinary medicine not approved and accredited, who is enrolled in the ECFVG or PAVE certification program, and shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must ~~must~~ have completed all other requirements of each program.

(3) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805649

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 305-7563



## CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

### SUBCHAPTER F. RECORDS KEEPING

#### 22 TAC §573.52

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.52, regarding Patient Record Keeping. This is the second proposal of this rule. The Board, after receiving comments from the previous proposal, made substantive changes and re-filed this proposal.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Veterinary Medical Examiners contemporaneously withdraws the proposed amendment to §573.52, which was previously published in the July 11, 2008, issue of the *Texas Register*.

The proposed amendment to subsection (a) would clarify the rule regarding patient record keeping and add the following requirements to the patient's records kept by the veterinarian: the phone number of the client, identification of the patient including name, species, breed, age, sex and description, any diagnostic images or written summary of results if unable to save any said image, applicable differential diagnosis or treatment, and notation of any amendment, supplementation, change or correction in a patient record not made contemporaneously with the act or observation, and provides an exception to the requirement of taking the temperature of an individual animal when it is difficult to obtain.

The proposed amendment to subsection (b)(1) requires that veterinarians maintain patient records for a minimum of five years, as opposed to three under the current rule, and that said records be "readily available", as opposed to "maintained on the business premises" under the current rule. The proposed amendment to subsection (b)(2) allows a veterinarian to destroy medical records relating to any civil, criminal or administrative proceeding if the veterinarian knows the proceeding has been finally resolved. The proposed amendment to subsection (b)(3) requires veterinarians to retain patient records for a longer length of time if mandated by other statute or regulation. The proposed

amendment to subsection (b)(5) allows a veterinarian, who is discontinuing his or her practice, to transfer ownership of records to another licensed veterinarian or group of veterinarians if the veterinarian provides notice consistent with §573.54, and the veterinarian assuming ownership of the records maintains them consistent with Chapter 573.

The proposed amendment to subsection (c), which requires a veterinarian to provide patient records to a client within 15 days of a request, and allowing for charges of reasonable associated fees, has been deleted in its entirety, and will be replaced by subsection (d). The language of subsection (c) was substantially incorporated into §573.53, adopted at the October 16, 2008 Board Meeting.

Dewey Helmcamp III, Executive Director of the Texas Board of Veterinary Medical Examiners, has determined that, for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to the state and/or local governments as a result of enforcement or administration of the proposed rule. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that, for each of the first five years that the proposed rule is in effect, the expected public benefit will be that Texas veterinarians shall maintain more comprehensive records and information related to the animals under their care.

Mr. Helmcamp has also determined that, for each of the first five years the proposed rule is in effect, there will be minimal economic costs to persons required to comply with the rule, and the rule will have a minimal adverse effect on small businesses, as additional costs may be associated with compliance with the proposed rule, depending on the manner a licensee stores the additional records required in the rule. However, these costs may be offset by the fact that licensees will no longer need to review their files at three years to pull rabies certificates, which are required to be kept for a period of five years by the Board and Texas Department of State Health Services.

#### Economic Impact Statement and Regulatory Flexibility Analysis:

The Board has approximately 5300 active, non-delinquent doctor of veterinary medicine licensees, and estimates 2% of these licensees are small businesses or micro-businesses (this data regarding small/micro business percentages is voluntarily submitted by licensees to the Board). The rule applies to all licensees that maintain patient records. Due to restrictions in data collected by the Board, the Board is unable to track how many licensees do not have available storage space for the additional two years of records, as proposed. The proposed amendments to §573.52 will require that veterinary patients' records be "readily available" for a minimum period of five years from the date of the patient's last treatment. The original language required that said records be "maintained on the business premises." Subsequent comments regarding the proposed rule expressed concern that veterinarians would be unduly burdened by the requirement of a five-year maintenance period, as opposed to three years under the current rule, due to a lack of available space to store additional records at their clinics. The projected economic impact of this rule would be an increase in costs associated with securing additional storage for an extra two years of patient records. In light of these concerns, the language "maintained on the business premises" was replaced by "readily available" to minimize adverse effects on small business owners of veterinary clinics who lack the available space for storage on their business

premises. To be "readily available," records need not be on the clinic premises, but can be stored in virtually any location which is readily available to the veterinarian. This includes off-site storage facilities, the veterinarian's home, computer storage on hard drives, servers, and/or computer disks. Further, with regard to any inconvenience to veterinarians related to the five-year record maintenance requirement, veterinarians are currently required to maintain rabies vaccination records for a minimum of five years, so the new rule makes record keeping under the Rules more consistent while at the same time, alleviating the need for veterinarians to pull rabies vaccinations from their files as they discard records older than three years.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

#### §573.52. Patient Record Keeping.

(a) Individual records will be maintained at the veterinarian's place of business, that are complete, contemporaneous and legible and include, but are not limited to:

- (1) name, ~~and~~ address, and phone number of the ~~of~~ client;
- (2) identification of patient, including name, species, breed, age, sex, and description ~~identity~~;
- (3) patient history;
- (4) dates of visits;
- (5) any immunization records;
- (6) weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;
- (7) temperature if required for diagnosis or treatment except when treating a herd, flock, ~~or~~ a species, or an individual animal that is difficult to obtain a temperature;
- (8) any laboratory analysis;
- (9) any diagnostic images or written summary of results if unable to save image ~~radiographs~~;
- (10) differential diagnosis and/or treatment, if applicable;
- (11) ~~[(40)]~~ names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed;
- (12) ~~[(41)]~~ other details necessary to substantiate the examination, diagnosis, and treatment provided, and/or surgical procedure performed; ~~[-]~~

(13) ~~[(42)]~~ any signed acknowledgment required by §§573.12, 573.14, 573.15, and 573.16. Each entry in the patient

record shall identify the veterinarian who performed or supervised the procedure recorded; and ~~[-]~~

(14) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

#### (b) Maintenance of Patient Records.

(1) ~~[(b)]~~ Except as provided in §573.51(c) of this title ~~[(Title)]~~ (relating ~~Relating~~ to Rabies Control), patient records shall be current and readily available ~~[maintained on the business premises]~~ for a minimum of five years from the anniversary date of the date of last treatment by the veterinarian ~~[period of three years. Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals].~~

(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.54 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

(e) Upon the request of the client or his/her authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days of the request, unless a longer period is reasonably required to duplicate the records. The veterinarian may charge a reasonable fee for this service, including actual costs for mailing, shipping or deliver. A veterinarian may not refuse a request for copies because payment in full for veterinary care has not been received from the client.]

(c) ~~[(d)]~~ When appropriate, licensees may substitute the words "herd", "flock" or other collective term in place of the word "patient" in subsections (a) and (b) of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and Board rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200805650

Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Earliest possible date of adoption: December 7, 2008  
For further information, please call: (512) 305-7563



## 22 TAC §573.54

The Texas Board of Veterinary Medical Examiners proposes new §573.54, regarding the transfer and disposal of patient records. This is the second proposal of this rule. The Board, after receiving comments from the previous proposal, made substantive changes and re-filed this proposal.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Veterinary Medical Examiners contemporaneously withdraws the proposed amendment to §573.54, which was previously published in the July 11, 2008, issue of the *Texas Register*.

The proposed new rule sets forth the required notification and method of notification when a licensed veterinarian discontinues the provision of veterinary services without the continuation of their practice. The proposed new rule also sets forth the process for notification of clients with regards to records when a licensed veterinarian voluntarily surrenders their license or the Board revokes their license. Based on comments received, the Board revised the language regarding notification of the closure of the veterinary practice to broaden the notification required to be given to clients to state "written notification" rather than a "letter" of notice. Written notification includes: by mail, by e-mail, and at the bottom of receipts given to clients. In addition, due to comments received, language was added to allow written notification to occur by placing a notice in the local newspaper. The rule also requires a custodian of records in instances where a licensed veterinarian voluntarily surrenders their license or the Board revokes their license.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will ensure the public's right to access their own pet's records in the case that a licensed veterinarian ceases to practice veterinary medicine.

Mr. Helmcamp has also determined there will be a small direct adverse effect on a subset of small businesses or micro-businesses because there is a minimal cost associated with compliance of this rule.

Mr. Helmcamp has further determined that there are minimal economic costs to persons required to comply with the rule.

### Economic Impact Statement and Regulatory Flexibility Analysis:

The Board has approximately 5300 active, non-delinquent doctor of veterinary medicine licensees, and estimates 2% of these licensees are small businesses or micro-businesses (this data regarding small or micro business percentages is voluntarily submitted by licensees to the Board). This rule only applies to licensees that are owners of veterinary practices and close their business rather than selling their business and transferring the

medical records to another veterinarian. Due to restrictions in data collected by the Board, the Board is unable to track how many licensees close their practice rather than sell their practice in any given period. However, for the purpose of this analysis, the Board considered as a representative sample, the licensees who retired their veterinary license last year, 2007. Of this sample, only 3 out of 19 retired veterinarians closed their practice rather than selling, or were not even owners of a practice (for example, they were government employees, employees of another veterinarian or the SPCA, relief veterinarians, military or researchers). The projected economic impact of this rule on a small subset of small or micro businesses will be small increases in the cost of compliance for written notification of the closure of a veterinary practice. In light of the previous proposal of this rule and to minimize adverse impacts on small or micro businesses, amendments to the language were changed by the Board to broaden the notification to include not just letters sent by mail to current clients but also notification by e-mail, written notice at the bottom of receipts given to clients, as well as the option of just placing an advertisement in the local paper. The Board considered removing the language regarding notification to clients but determined that the public welfare was benefited by allowing clients to have an opportunity to request their pet's medical records in order to better ensure the continuation of the treatment for their pet with another veterinarian.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

### §573.54. Transfer and Disposal of Patient Records.

(a) Required Notification of Discontinuance of Practice.  
When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she is responsible for ensuring that clients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their patient records to another veterinarian.

#### (b) Method of Notification.

(1) When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she shall provide notice to clients of when the veterinarian intends to terminate the practice or relocate, and will no longer be available to clients, and offer clients the opportunity to obtain a copy of their patient records.

#### (2) Notification shall be accomplished by:

(A) placing written notice in the veterinarian's office;  
and

(B) sending written notification to clients seen in the last three years notifying them of discontinuance of practice, or placing a notice in the local newspaper.

(c) Voluntary Surrender or Revocation of Veterinarian's License.

(1) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must notify their clients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must obtain a custodian for their records to be approved by the Board within 30 days of the effective date of the voluntary surrender or revocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



## SUBCHAPTER G. OTHER PROVISIONS

### 22 TAC §573.65

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.65, regarding definitions, specifically adding a definition of invasive dentistry or invasive dental procedures.

The proposed amendment defines invasive dentistry or invasive dental procedures to include exposing of the dental pulp or the performance of extractions of teeth. This definition is reflective of the current Board's interpretation of the term invasive dental procedures as used in §573.10(f) Supervision of Non-Licensed Employees.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that only licensed veterinarians are performing invasive dental procedures and clarifying this term as used in Board rules for licensees.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses because this is simply defining in rule what is already the current Board's interpretation of the term invasive dental procedures.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment to §573.65 is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.65. *Definitions.*

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Invasive dentistry or invasive dental procedures--exposing of the dental pulp, or performing extractions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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## CHAPTER 575. PRACTICE AND PROCEDURE

### 22 TAC §575.5

The Texas Board of Veterinary Medical Examiners proposes an amendment to §575.5, regarding subpoenas and witness expenses.

The proposed amendment provides for a \$25 per day fee for a witness called at the request of the Board as well as reimbursement of travel expenses in the same manner as Board employees. An expert witness called at the request of the Board shall be paid a fee of \$200 per day and reimbursement for travel expenses in the same manner as Board employees.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed, as the budget has already been set to include expenses for witnesses for the Board in the enforcement

of cases. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that witness will be reimbursed for their time and travel expenses in order to provide the best testimony for the Board in seeking enforcement of possible violations of the Board's rules and/or the Veterinary Licensing Act.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses because this is providing additional funds to reimburse witnesses for their time and travel expenses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.5. *Subpoenas/Witness Expenses.*

(a) - (d) (No change.)

(e) A witness, called at the request of the Board, who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive a fee of \$25 per day and reimbursed for travel expenses in the same manner as Board employees. An expert witness called at the request of the Board shall be paid a fee of \$200 per day and reimbursed for travel expenses in the same manner as Board employees. [reimbursement for expenses incurred in complying with the subpoena as set by the Legislature in the APA, Texas Government Code Annotated §2001.103.]

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

## CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

### SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

#### 22 TAC §661.44

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.44, concerning rejected applications.

The amendment will clarify Board policy by adding deadline dates to receipt of information lacking in rejected applications.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will add deadline dates in order to clarify Board policy.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### §661.44. *Rejections.*

Should the board reject the application of any applicant, the fee accompanying the application will be retained by the board. If an application is rejected for any reason, the applicant will be notified by first class mail. The applicant may thereafter file with the board any further evidence or reason to support a claim for reconsideration on or before the next application deadline date (§661.41(b) of this title (relating to Applications), either July 15 or January 15). It is the policy and intention of the board to give a rejected applicant every reasonable opportunity to support a claim for reconsideration and to consider such evidence as may have been omitted from or overlooked in the original application. An applicant may timely apply for a hearing pursuant to Title 2, Occupations Code, Chapter 53.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200805592

Sandy Smith  
Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



## 22 TAC §661.45

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.45, concerning examinations.

The amendment will clarify Board policy for examination candidates that have been called to active duty by the military.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will add language regarding examination candidates who are approved for examination and have been called to active military duty.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §661.45. *Examinations.*

(a) - (f) (No change.)

(g) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request the examination cycle be postponed and any paid examination fees encumbered toward a future examination date. Such candidates shall submit adequate documentation, including copies of orders, and a request to postpone the examination to the Board. The candidate shall notify the Board of their availability to resume the examination cycle within 60 days of release from active duty or when they are deployed to a location that will proctor the examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandy Smith  
Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



## 22 TAC §661.53

The Texas Board of Professional Land Surveying (TBPLS) proposes a new §661.53, concerning exemptions from penalty regarding late renewals.

The new section will add language to comply with §55.002 (Exemption From Penalty for Failure to Renew License) of Occupations Code Chapter 55 (Renewal of License While on Military Duty).

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify reasons for a registrant to be exempt from paying a penalty for late renewal of their license.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the new section may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new section implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §661.53. *Active Duty Military.*

Registrants are exempt from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the Board (copies of orders) that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside Texas.



This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 239-5263



## CHAPTER 664. CONTINUING EDUCATION

### 22 TAC §664.4

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §664.4, concerning types of acceptable continuing education.

The amendment will clarify Board policy regarding authorship of technical papers in professional land surveying publications.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify board approved publications.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### *§664.4. Types of Acceptable Continuing Education.*

Continuing education courses and professional development undertaken by a registrant shall be acceptable if the activity is approved by the board and falls in one or more of the following categories:

(1) - (4) (No change.)

(5) author of a technical paper relating to professional land surveying published in a board approved [refereed] publication[- The board shall maintain a list of approved publications];

(6) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200805593

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



### 22 TAC §664.7

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §664.7, concerning determining the number of credit hours for continuing education.

The amendment will clarify the number of hours a registrant may earn for authorship of a technical paper in an approved professional land surveying publication.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify how the board will grant hours for authorship of an article in an approved publication.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

#### *§664.7. Determination of Credit Units.*

The requirements for determination of continuing education units shall be as follows.

(1) - (4) (No change.)

(5) Authorship which meets the board's criteria as set out in §664.4(5) of this title (relating to Types of Acceptable Continuing Education) shall be credited on a case by case basis [~~with 2.5 hours continuing education credits, for each such publication~~].

(6) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2008.

TRD-200805594

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 239-5263



## 22 TAC §664.13

The Texas Board of Professional Land Surveying (TBPLS) proposes a new §664.13, concerning exemptions from the requirements to obtain continuing education.

The new section will add language to comply with §55.003 (Extension of Certain Deadlines for Active Duty Military Personnel) of Occupation Code Chapter 55 (Renewal of License While on Military Duty).

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify reasons for a registrant to be exempt from completing their continuing education requirement.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the new section may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new section implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §664.13. Exemptions.

A Registrant may be exempt from the professional development educational requirements for one of the following reasons:

(1) New Registrant by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside Texas in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) Registrants who list their status as "Inactive".

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2008.

TRD-200805596

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 239-5263



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 133. GENERAL MEDICAL PROVISIONS

#### SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

### 28 TAC §133.20

The Texas Department of Insurance, Division of Workers' Compensation ("Division") proposes amendments to §133.20(b) regarding Medical Bill Submission by Health Care Provider.

Proposed §133.20(b) incorporates into Division rules the provisions of new §408.0272 of the Texas Labor Code as added by House Bill (HB) 1005, enacted by the 80th Texas Legislature, Regular Session. Section 408.0272 became effective September 1, 2007. There are no other rules anticipated in order to implement the section.

Section 408.0272 provides, in pertinent part, that the time limit of 95 days for a health care provider to submit a claim for payment to the insurance carrier, as set forth in Labor Code §408.027(a), will not apply in three circumstances. The first circumstance is when the provider submits satisfactory proof to the Commissioner of Workers' Compensation (Commissioner) that the provider had filed for reimbursement within the 95 days but had filed with either the group accident and health insurance

carrier where the injured employee is a covered insured, an HMO where the injured employee is a covered enrollee, or a workers' compensation carrier other than the insurance carrier liable for payments. Section 408.0272(c) establishes that once a provider has been notified of the erroneous submission, the provider has 95 days to submit the claim for payment to the correct workers' compensation insurance carrier. The second exception is if the Commissioner determines that the failure to submit the claim during the 95 days was due to a catastrophic event that substantially interfered with the normal business operations of the provider. The third exception is where the parties agree to extend the period for submitting a claim for payment.

The proposed amendment to §133.20(b) updates the present rule, which is currently an incomplete statement of the deadlines for health care providers to submit claims for payment. At the time the current §133.20(b) became effective on May 2, 2006, the exceptions in §408.0272 had not been enacted by the Legislature. The amendment includes, by reference, those new exceptions enacted by Labor Code §408.0272. These exceptions pertain to "timely submission" of a health care provider's claim for payment and do not affect an insurance carrier's ability to review a medical service for other issues such as medical necessity, relatedness, and/or compensability.

Matthew Zurek, Executive Deputy Commissioner for Policy and Research, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Matthew Zurek, Executive Deputy Commissioner for Policy and Research, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the amended section will be due to harmonizing of the rules to reflect the current statutory requirements. There will be minimal to no additional economic cost to the insurance carriers and health care providers, since most medical bills are currently submitted within the 95 day time limit. However, some health care providers' claims for payment that may have previously been denied because of the application by insurance carriers of the 95 day requirement, will now not be denied by insurance carriers for this reason if one of the exceptions applies. This may result in additional payment of claims that would have otherwise been denied. In conjunction with Government Code §2006.002(c), the Division has determined that the proposed amendment to §133.20, concerning the exceptions to the 95 day time limit set forth in Labor Code §408.0272, will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposed amendment. Because the proposed amendment does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with this proposed amendment are the result of the prior enactment of HB 1005, and not the result of the adoption, enforcement, or administration of the proposed amendment. In accordance with Government Code §2006.002(c), the Division has therefore determined that a regulatory flexibility analysis is not required because the proposed amendment will not have an adverse impact on small or micro businesses.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does

not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on December 8, 2008. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules> or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Deputy Commissioner for Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744 by 5:00 p.m. on December 8, 2008. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Labor Code §§408.027(a), 408.0272, 413.015, 402.00111 and 402.061.

Section 408.027(a) sets out the deadline for health care providers to submit claims for payment to the insurance carrier. Section 408.0272 sets forth the exceptions to the deadline stated in §408.0272. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§408.027(a), 408.0272, 413.015, 402.00111, and 402.061.

*§133.20. Medical Bill Submission by Health Care Provider.*

(a) (No change.)

(b) A health care provider shall not submit, except as provided in Labor Code §408.0272, a medical bill later than the 95th day after the date the services are provided.

(c) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805641

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 804-4716



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

## SUBCHAPTER F. MOTOR VEHICLE SALES TAX

### 34 TAC §3.96

The Comptroller of Public Accounts proposes amendments to §3.96, concerning imposition and collection of a surcharge on certain diesel-powered motor vehicles.

The proposed amendments implement a legislative change made by Senate Bill 867, 79th Legislature, 2005, which eliminated the imposition of the surcharge on recreational vehicles that are not held or used in the production of income. Subsection (a)(1) is amended accordingly. The amendments also implement a legislative change made by Senate Bill 12, 80th Legislature, 2007 which extended the expiration of the law under Tax Code, §152.0215 until August 31, 2013. Subsection (g) is amended accordingly.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming administrative rules to current law under Tax Code, Chapter 152. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §152.0215.

*§3.96. Imposition and Collection of a Surcharge on Certain Diesel Powered Motor Vehicles.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Motor vehicle subject to surcharge--A motor vehicle that is diesel powered and registered with a gross vehicle weight in excess of 14,000 pounds other than a recreational vehicle, as that term is defined by Transportation Code, §522.004(b), that is not held or used for the production of income. See §3.320 of this title (relating to Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel Equipment) for information about the imposition of the surcharge to certain equipment.

(2) - (4) (No change.)

(b) - (f) (No change.)

(g) Expiration. The surcharge expires August 31, 2013 [September 30, 2008: The surcharge is not due on vehicles sold or used in Texas after that date].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805660

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 475-0387



## SUBCHAPTER O. STATE SALES AND USE TAX

### 34 TAC §3.320

The Comptroller of Public Accounts proposes amendments to §3.320 relating to Texas emissions reduction plan surcharge; off-road, heavy-duty diesel equipment. The proposed amendment to subsection (a)(1) reflects longstanding agency policy that the surcharge does not apply to certain equipment used directly in oil and gas exploration and production. The proposed amendments to subsection (b)(1) - (4) implement a legislative change made by Senate Bill 12, 80th Legislature, 2007 which extended the expiration of the law under Tax Code, §151.0515 until September 1, 2013. Other changes to the section are for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming administrative rules to current agency policy and to current law under Tax Code, Chapter 152. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0515.

*§3.320. Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel Equipment.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Off-road, heavy-duty diesel equipment--Diesel-powered equipment of 50 horsepower or greater, other than motor vehicles and equipment used directly in oil and gas exploration and production at an oil or gas well site. See §3.96 of this title (relating to Imposition and Collection of a Surcharge on Certain Diesel Powered Motor Vehicles) for information about the imposition of the surcharge on motor vehicles. Off-road, heavy-duty diesel equipment includes accessories and attachments sold with the equipment. Off-road, heavy-duty diesel

equipment includes, but is not limited to, the following diesel-powered equipment:

(A) (No change.)

(B) bore equipment and drilling rigs, except drilling rigs used to drill oil and gas wells;

(C) - (W) (No change.)

(2) (No change.)

(3) Sale price--The total amount a purchaser pays a seller for the purchase, lease, or rental of off-road, heavy-duty diesel equipment as set out in Tax Code, §151.007. The sales price includes charges for accessories, transportation, installation, services, and other expenses that are connected to the sale.

(b) Imposition of Surcharge.

(1) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment sold in Texas if the purchaser takes possession of or title to the equipment [after June 30, 2003 and] before September 1, 2013 [October 1, 2008].

(2) A 2.0% surcharge is due on the sales price, excluding separately stated interest charges, of off-road, heavy-duty diesel equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), if the lessee takes possession of the equipment [after June 30, 2003 and] before September 1, 2013 [October 1, 2008].

(3) A 2.0% surcharge is due on the lease payments for off-road, heavy-duty diesel equipment that is leased under an operating lease, as defined in §3.294 of this title, if the lessee takes possession [of the equipment after June 30, 2003 and] before September 1, 2013 [October 1, 2008].

(4) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment purchased for use in Texas if the purchaser brings the equipment into Texas [after June 30, 2003 and] before September 1, 2013 [October 1, 2008]. See §3.346 of this title (relating to Use Tax).

(5) (No change.)

(c) - (d) (No change.)

(e) Reports and payments.

(1) A seller or purchaser with a surcharge account, including direct payment holder, must report and pay the surcharge in the same manner as sales or use tax, but separate reports and payments for the surcharge are required.

(A) A seller's or purchaser's reporting period (i.e., monthly, quarterly, or yearly) and due date for the surcharge are determined by the amount of surcharge that the seller collects or purchaser owes. See §3.286 of this title [(relating to Seller's and Purchaser's Responsibilities)].

(B) (No change.)

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805659

Ashley Harden

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 475-0387



## SUBCHAPTER V. FRANCHISE TAX

### 34 TAC §3.582

The Comptroller of Public Accounts proposes an amendment to §3.582, concerning margin: passive entities.

Language is added in subsection (b)(3) and (c)(2) to clarify that federal gross income is the gross income that is reportable on an entity's federal income tax return.

Subsection (c)(2)(B) is amended to note that the distributive shares of partnership income that are rental income are not considered passive.

Subsection (d)(1) is amended to clarify that rental income that flows from a partnership to a partner is not passive income.

Subsection (g) is expanded to clarify the reporting requirements for passive entities. New paragraph (1) is added to clarify that only a passive entity that has notified the comptroller or secretary of state that it is doing business in Texas must file an information report each year to verify that the passive entity qualifications have been met for that year. New paragraph (2) is added to clarify that a passive entity that has not notified the comptroller or the secretary of state that it is doing business in Texas must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. New paragraph (3) is added to allow that an entity that receives notification from the comptroller asking if the entity is taxable must reply to the comptroller within 30 days of the notice.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing guidance to entities that potentially qualify as passive entities under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated significant economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.0003.

§3.582. *Margin: Passive Entities.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Federal gross income--Gross income as defined in Internal Revenue Code, §61(a), that is reportable on the entity's federal income tax return.

(4) - (10) (No change.)

(c) Qualification as a passive entity:

(1) (No change.)

(2) at least 90% of an entity's federal gross income, as reportable on the entity's federal income tax return, for the period on which margin is based must consist of the following sources of income:

(A) (No change.)

(B) distributive shares of partnership income to the extent that those distributive shares of income are greater than zero, excluding rental income (see subsection (d)(1) of this section);

(C) - (D) (No change.)

(d) The income described by subsection (c)(2) of this section, does not include:

(1) rent, including rental income that flows from a partnership to a partner; or

(2) (No change.)

(e) - (f) (No change.)

(g) Reporting requirement for a passive entity. If an entity meets all of the qualifications of a passive entity for the reporting period, the entity will owe no tax; ~~however, the entity must file information to verify that the passive entity qualifications are met each year.~~

(1) If a passive entity has notified the comptroller or the secretary of state that it is doing business in Texas, the passive entity must file an information report to verify that the passive entity qualifications are met each year. For each report year that an entity qualifies as passive, an Ownership Information Report is not required.

(2) If a passive entity has not notified the comptroller or the secretary of state that it is doing business in Texas, the passive entity must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity.

(3) If a passive entity receives notification in writing from the comptroller asking if the entity is taxable, the entity must reply to the comptroller within 30 days of the notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805600

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 475-0387

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### 34 TAC §3.583

The Comptroller of Public Accounts proposes an amendment to §3.583, concerning margin: exemptions.

Internal Revenue Code (IRC), §501(c)(16), included in subsection (i)(1)(A) in error, is deleted.

Subsection (i)(10) is amended to delete the reference of subsection (e) and correctly reflect subsection (f).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing correct references to entities that are potentially exempt from the tax imposed under Tax Code, Chapter 171. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.063.

§3.583. *Margin: Exemptions.*

(a) - (h) (No change.)

(i) Provisional exemptions.

(1) If established with the comptroller, the following entities may be granted a temporary exemption from franchise tax:

(A) a nonprofit entity that has applied for exemption from federal income tax under IRC, §501(c)(3), (4), (5), (6), (7), (8), (9), (10), ~~[(16), or]~~ (19); or

(B) - (C) (No change.)

(2) - (9) (No change.)

(10) An entity that provides the comptroller a copy of the letter from the IRS stating that the federal exemption has been granted will be considered for franchise tax exemption under subsection ~~(f)~~ ~~[(e)]~~ of this section.

(11) (No change.)

(j) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805601

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 936-6472

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### 34 TAC §3.584

The Comptroller of Public Accounts proposes an amendment to §3.584, concerning margin: reports and payments.

Amendments to subsection (b) clarify the reporting requirements of nontaxable entities. Paragraph (1), which relates mainly to the transition year of the revised franchise tax, is deleted. Language is added to require that a nontaxable entity reply to the comptroller within 30 days when asked in writing if the entity is taxable.

Language regarding privilege periods is deleted from subsections (c)(1)(B) and (C) as privilege periods no longer affect the calculation of the franchise tax. Detailed information regarding combined reporting is deleted from paragraph (1)(H). The subparagraph refers to §3.590 of this title (relating to Margin: Combined Reporting) for the rules on filing a combined report. The information in paragraph (3), regarding reporting requirements when no tax is due, is incorporated in subsection (d)(5) and subsection (c)(3) is deleted.

The title of subsection (d)(1) is amended to read "Annual Election" and the title "Calculation" is deleted. Further information regarding the annual election to deduct cost of goods sold or compensation and the restrictions that apply when amending that election is added. The portion of subsection (d)(1) regarding the calculation of margin is now subsection (d)(2) and is re-titled "Calculation". Subsequent paragraphs of this subsection are renumbered accordingly. Paragraph (4), regarding the calculation of annualized total revenue, is added. Taxable entities that have an accounting period that is more or less than 12 months must annualize total revenue to determine eligibility for the \$300,000 no tax due threshold, discount, and E-Z Computation. Examples of the calculation are included. Subsequent paragraphs of this subsection are renumbered accordingly. Paragraph (5) is amended and expanded to clarify under what circumstances no tax is due and which reports must be filed when no tax is due. Language is added to clarify that combined groups and entities that have tax due of less than \$1,000 are not qualified to file a No Tax Due Information Report. Paragraph (6) is amended to state that annualized total revenue must be used to determine a taxable entity's discount percentage. Paragraph (7) is amended to state that annualized total revenue must be used to determine a taxable entity's eligibility for the E-Z Computation. This subsection is also amended to describe the E-Z Computation more concisely and to emphasize that a deduction for cost of goods sold or compensation is not allowed when using the E-Z Computation. Paragraph (8) is amended to include specific references to §3.587 of this title for information concerning the tiered partnership provision. This subsection is also amended to include the upper tier entity's reporting requirement.

Subsection (f) is amended to properly identify where it should be noted on a report that the report is amended. Paragraph (1) is amended to clarify what methods of determining margin may be used in filing an amended report after the due date of the report.

Subsection (i) is amended to include financial institutions with corporations and limited liability companies as taxable entities that must file a public information report and to clarify that all other taxable entities must file an ownership information report. This subsection is also amended to clarify that it is the legal formation of the entity that determines if it is a corporation, limited liability company or a financial institution.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing guidance to entities that are required to file reports and remit payments under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implement Tax Code, §§171.0021, 171.101, 171.1015, 171.1016, 171.202, and 171.203.

#### §3.584. *Margin: Reports and Payments.*

(a) (No change.)

(b) Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. ~~Except [Notification to comptroller, except]~~ for passive entities ~~[(  )]~~ see §3.582 (relating to Margin: Passive Entities).~~[(  )]~~

~~{(1) If a taxable entity has notified the comptroller that it is doing business in Texas, the entity must notify the comptroller in writing by the due date of the first report for which the entity qualifies as a nontaxable entity that the report and payment are not due because the entity qualifies as a nontaxable entity. After such notification, the entity must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity.}~~

~~{(2) If a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, [the nontaxable entity] must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an entity receives notification in writing from the comptroller asking if the entity is taxable, the entity must reply to the comptroller within 30 days of the notice.~~

(c) Reports and due dates.

(1) Each taxable entity subject to the franchise tax levied by Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the taxable entity. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.

(A) (No change.)

(B) Initial report. Both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. ~~[The initial franchise tax report and payment are for the privilege periods beginning on the beginning~~

date and ending on December 31 following the first anniversary of the beginning date. For example, if a Texas taxable entity is chartered on June 1, 2008, the payment due with the initial report will be for the privilege periods from June 1, 2008 - December 31, 2009. In addition, when the first anniversary occurs during the period from October 4 - December 31, the tax paid with the initial report is for an additional privilege period beginning on January 1 following the first anniversary and ending on the following December 31. For example, if a Texas taxable entity is chartered on November 1, 2008, the payment due with the initial report will be for the privilege periods from November 1, 2008 - December 31, 2010. The taxable margin computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the taxable entity's first year of business. If the period used to compute business done for purposes of the initial report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the initial report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the initial report.

(C) Annual report. The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. ~~[The annual tax is paid for the privilege period of the calendar year in which the report is due.]~~ The taxable margin computed on an annual report is based on the business done during the period beginning with the day after the last date upon which tax was computed under Tax Code, Chapter 171 on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due, or, if there is no such ending date, then ending on December 31 of the calendar year before the calendar year in which the report is originally due. A taxable entity that uses a 52 - 53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable margin is computed. If the period used to compute business done for purposes of the annual report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the annual report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the annual report.

(D) - (G) (No change.)

(H) Combined reporting. Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report in lieu of individual reports, except that a public information report or ownership information report must be filed for each member of the combined group with nexus. ~~[A newly created taxable entity that is a member of a combined group is not required to report data on a separate initial report, and a combined group that would not otherwise be required to file an initial report shall not be required to file an initial report solely because a newly-created entity has become a member of the combined group.]~~ See §3.590 of this title (relating to Margin: Combined Reporting), for rules on filing a combined report.

(2) (No change.)

~~[(3) An information report must be filed, even if no tax is due. A taxable entity must file a no tax due information report for the privilege periods covered by an initial report or regular annual report in which no tax is due, as authorized under Tax Code, §171.204.]~~

(d) Calculation of tax [margin].

(1) Annual Election. If eligible, ~~a [Calculation: A]~~ taxable entity must make an annual election to deduct cost of goods sold or compensation by the due date or at the time the report is filed, whichever is later. The election is made by filing the franchise tax report using one method or the other. (See §3.588 of this title (relating to Margin: Cost of Goods Sold) and §3.589 of this title (relating to Margin: Compensation) for eligibility.) ~~[of its return].~~ If an election is not made ~~[by the due date of the return]~~, the taxable entity's margin will be calculated as 70% of total revenue. After the due date of the report, a taxable entity may not amend its report to change its election to cost of goods sold or compensation. However, a taxable entity may amend its report to change its method of computing margin from cost of goods sold or compensation to 70% of total revenue or, if eligible, the E-Z Computation. ~~[indicated in subparagraph (C) of this paragraph. This election may not be amended. A taxable entity's margin equals the least of three calculations:]~~

(2) Calculation. A taxable entity's margin equals the least of the following three calculations, if eligible:

- (A) Total revenue minus cost of goods sold;
- (B) Total revenue minus compensation; or
- (C) 70% of total revenue [Total revenue times 70%].

(3) [(2)] Rate. A tax rate of 1.0% of taxable margin applies to most taxable entities. A tax rate of 0.5% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade under division F or G of the 1987 Standard Industrial Classification Manual published by the Federal Office of Management and Budget. A taxable entity is primarily engaged in retail or wholesale trade only if:

(A) the total revenue from its activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than the retail and wholesale trade;

(B) less than 50% of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for those businesses under Major Group 58 (eating and drinking establishments); and

(C) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity or gas.

(4) Annualized Total Revenue. When the accounting period on which a report is based is more or less than 12 months, a taxable entity must annualize its total revenue to determine its eligibility for the \$300,000 no tax due threshold, discount, and E-Z Computation. The amount of total revenue used in the actual tax calculations will not change as a result of annualizing revenue. To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, and then multiply the result by 365. Examples are as follows:

(A) a taxable entity's 2008 franchise tax report is based on the period September 15, 2007 through December 31, 2007 (108 days), and its total revenue for the period is \$150,000. The taxable entity's annualized revenue is \$506,944 (\$150,000 divided by 108 days multiplied by 365 days). Based on its annualized revenue, the taxable entity would not qualify for the \$300,000 no tax due threshold, is eligible to file using the E-Z computation and would qualify for a discount of 40% of the tax due;

(B) a taxable entity's 2008 franchise tax report is based on the period January 1, 2006 through December 31, 2007 (730 days), and its total revenue for the period is \$1,500,000. The taxable entity's



annualized revenue is \$750,000 (\$1,500,000 divided by 730 days multiplied by 365 days). Based on its annualized revenue, the taxable entity would not qualify for the \$300,000 no tax due threshold, is eligible to file using the E-Z computation and would qualify for a discount of 20% of the tax due.

(5) ~~[(3)]~~ No tax due. A taxable entity will owe no tax if its tax due is less than \$1,000, it has zero Texas receipts, or its annualized total revenue is less than or equal to \$300,000, or the amount determined under Tax Code, §171.006~~[, per 12 month period on which the report is based]~~. See §3.587(c)(8)(C) of this title (relating to Margin: Total Revenue) for the tiered partnership exception. A taxable entity that does not owe any tax under this subsection must file a ~~[no tax due information]~~ report as follows: ~~[authorized by subsection (c)(3) of this section:]~~

(A) a taxable entity, other than a combined group, that has zero Texas receipts or has annualized total revenue of \$300,000 or less may file a No Tax Due Information Report;

(B) a taxable entity that has tax due of less than \$1,000 cannot file a No Tax Due Information Report and must file either a regular annual report or, if qualified, the E-Z Computation Report;

(C) a combined group cannot file a No Tax Due Information Report and must file either a regular annual report or, if qualified, the E-Z Computation Report.

(6) ~~[(4)]~~ Discount. A taxable entity is entitled to a discount of the tax imposed as follows. If annualized total revenue is:

(A) greater ~~[If total revenue is greater]~~ than \$300,000 and less than \$400,000, the discount is 80% of tax due.

(B) greater ~~[If total revenue is greater]~~ than or equal to \$400,000 and less than \$500,000, the discount is 60% of tax due.

(C) greater ~~[If total revenue is greater]~~ than or equal to \$500,000 and less than \$700,000, the discount is 40% of tax due.

(D) greater ~~[If total revenue is greater]~~ than or equal to \$700,000 and less than \$900,000, the discount is 20% of tax due.

(7) ~~[(5)]~~ E-Z Computation. A taxable entity with annualized total revenue of \$10 million or less may choose ~~[elect]~~ to pay the franchise tax by using the E-Z Computation method. Under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.575% to apportioned total revenue ~~[multiplying the taxable entity's total revenue times their apportionment factor times 0.575% (-.00575)]~~ and subtracting any applicable discount as provided by paragraph (6) ~~[(4)]~~ of this subsection. No deduction is allowed for cost of goods sold or compensation if a taxable entity chooses to compute its tax liability under the E-Z Computation. Additionally, no other credits or adjustments are allowed if a taxable entity chooses ~~[elects]~~ to compute its tax liability under the E-Z Computation.

(8) ~~[(6)]~~ Tiered partnership provision. See §3.587(b)(14) and (c)(8) of this title for information concerning the tiered partnership provision.

(A) For eligible entities choosing to file under the tiered partnership provision, paragraphs (5), (6) and (7) ~~[Paragraphs (3), (4) and (5)]~~ of this subsection~~[,]~~ do not apply to an upper tier entity if, before the attribution of ~~[any]~~ total revenue by a lower tier entity to an upper tier entity, the lower tier entity does not meet the criteria.

(B) The lower tier entity must submit a report to the comptroller showing the amount of total revenue that each upper tier entity must ~~[should]~~ include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller

showing the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity ~~[taxable margin calculation, according to the ownership interest of the upper tier entity]~~.

(e) (No change.)

(f) Amended reports. In filing an amended report, the taxable entity must type or print on the top of the report~~[, immediately above the taxable entity name,]~~ the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report.

(1) A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, ~~[ or]~~ for the purpose of supporting a claim for refund, or to change its method of computing margin to 70% of total revenue or, if qualified, the E-Z Computation. After the due date of the report, ~~an[- An]~~ amended report may not be filed to change the method of computing margin to ~~[between]~~ a cost of goods sold deduction or to ~~[and]~~ a compensation deduction.

(2) - (6) (No change.)

(g) - (h) (No change.)

(i) Information report. Each taxable entity on which the franchise tax is imposed must file an information report.

~~[(1) For a taxable entity other than a corporation or limited liability company, an ownership information report as described in Tax Code, §171.201 and §171.202 is due at the same time each initial and annual report is due.]~~

(1) ~~[(2)]~~ For a taxable entity legally formed as a corporation, ~~[ or]~~ limited liability company, or financial institution, a public information report as described in Tax Code, §171.203, is due at the same time each initial and annual report is due. An authorized person must sign the public information report on behalf of the taxable entity under a certification that:

(A) all information contained in the report is true and correct to the best of the authorized person's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer, director, or manager and who is not employed by the taxable entity or a related (at least 10% ownership) taxable entity on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(2) For all other taxable entities, an ownership information report as described in Tax Code, §171.201 and §171.202 is due at the same time each initial and annual report is due.

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805602

Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
Earliest possible date of adoption: December 7, 2008  
For further information, please call: (512) 475-0387

◆ ◆ ◆  
**34 TAC §3.585**

The Comptroller of Public Accounts proposes an amendment to §3.585, concerning margin: annual report extensions.

Subsection (c)(3)(B) is amended to add that a separate entity that was included in a combined report originally due in the previous calendar year may not use the 100% extension option.

Subsection (f) is amended to clarify that a combined group is required to make its franchise tax payments by electronic funds transfer if any member of the combined group receives notice of the requirement. Subsection (f)(3)(A) is amended to correct the due date of the first extension for entities that are required to make franchise tax payments by electronic funds transfers to August 15. Subsection (f)(3)(B) is amended to add that a separate entity that was included in a combined report originally due in the previous calendar year may not use the 100% extension option.

Subsection (g) is amended to clarify that it concerns the second extension for entities that are required to make franchise tax payments by electronic funds transfers.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing clarification to taxpayers regarding obtaining extensions for filing annual reports under Tax Code, Chapter 171. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.202.

*§3.585. Margin: Annual Report Extensions.*

(a) - (b) (No change.)

(c) Extension to November 15. Except for a taxable entity which has been notified by the comptroller that it is required to make its franchise tax payments by electronic funds transfer (see subsections (d), (f), and (g) of this section), a taxable entity will be granted an extension to file an annual report on or before the next November 15, if the taxable entity:

(1) - (2) (No change.)

(3) remits with the extension request:

(A) (No change.)

(B) 100% of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14 of the year for which the extension is requested. A combined group may only use this 100% option if the combined group has lost a member or if the members of the combined group are the same as they were on the last day of the period upon which the report due in the previous calendar year was based. A separate entity that was included in a combined group report originally due in the previous calendar year may not use the 100% extension option.

(d) - (e) (No change.)

(f) Required electronic funds transfer extension to August 15. Subject to paragraphs (1) - (3) of this subsection, a [A] taxable entity which has been notified by the comptroller that it is required to make its franchise tax payments by electronic funds transfer (see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers)) will be granted an extension to file an annual report on or before the next August 15. A combined group is required to make its franchise tax payments by electronic funds transfer if any member of the combined group receives notice of the requirement. An extension to August 15 will be granted[-] if the taxable entity:

(1) - (2) (No change.)

(3) remits with the extension request:

(A) 90% or more of the amount of tax reported as due on the report filed on or before August 15 [~~November 15~~]; or

(B) 100% of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14 of the year for which the extension is requested. A combined group may only use this 100% option if the combined group has lost a member or if the members of the combined group are the same as they were on the last day of the period upon which the report due in the previous calendar year was based. A separate entity that was included in a combined group report originally due in the previous calendar year may not use the 100% extension option.

(g) Required electronic funds transfer second extension to November 15. A taxable entity granted an extension under subsection (f) of this section, will be granted an extension to file an annual report on or before the next November 15, if the taxable entity:

(1) - (3) (No change.)

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 936-6472

◆ ◆ ◆  
**34 TAC §3.587**

The Comptroller of Public Accounts proposes an amendment to §3.587, concerning margin: total revenue.

Subsection (b)(1) is amended to reflect a change in policy regarding how the actual cost of uncompensated care is calculated. Paragraph (3) is being amended to define health care institutions as specifically defined in the statute. Paragraph (15), which defines uncompensated care, is deleted. Uncompensated care is now defined under paragraph (1). Subsequent paragraphs have been renumbered.

Subsection (c)(5) is amended to more narrowly interpret Tax Code, §171.1011(j). Only expenses excluded from total revenue may not be included in the determination of the cost of goods sold or compensation. Language that did not allow costs related to excluded revenue to be included in the determination of the cost of goods sold or compensation is deleted. Paragraph (8) has been expanded to clarify the reporting process for entities in a tiered partnership arrangement that choose to file under the tiered partnership provision.

Subsection (e)(3), regarding the exclusion from total revenue for principal repayments, is amended to add language from the statute which restricts the exclusion to lending institutions only. Language is added to paragraph (7) to clarify that an exclusion from revenue is not allowed for payments received by a staff leasing services company from a client company for independent contractors whose wages are reportable on Internal Revenue Service Form 1099. Language in paragraph (10)(A) that did not allow a revenue exclusion for co-payments and deductibles received from a patient under the specified health care programs is deleted. Language that allows co-payments and deductibles received from the patient and supplemental insurance under the specified health care programs to be excluded from total revenue is added.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing guidance to taxpayers for computing certain items of total revenue under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposals may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.1011 and §171.1015.

§3.587. *Margin: Total Revenue.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actual cost [costs] of uncompensated care--the amount determined by multiplying Operating Expenses by the Uncompensated Care Ratio where: [either (A) or (B) of this paragraph where total charges means all amounts for health care services, including uncompensated care and compensation includes amounts determined under Tax Code, §171.1013, regardless of whether the taxable entity elects to subtract compensation. See §3.589 of this title (relating to Margin: Compensation).]

(A) operating expenses are the amounts reported on line 2 and line 21, Internal Revenue Service Form 1065 or the amounts reported on line 2 and line 20, Internal Revenue Service Form 1120S or the corresponding line items from any other federal form filed, less any items that have already been subtracted from total revenue (e.g., bad debts); [Uncompensated care divided by total charges multiplied by operating expenses. If this method is used to determine uncompensated care, a corresponding adjustment must be made in determining compensation by the ratio of uncompensated care divided by total charges.]

(B) uncompensated care ratio means uncompensated care charges less partial payments divided by total charges; [Uncompensated care divided by total charges multiplied by the result of total operating expenses less compensation.]

(C) uncompensated care charges are the standard charges for health care services where the provider has not received any payment or where the provider has received partial payment for health care provided to the patient. Uncompensated care charges do not include charges for any services covered by the programs described in subsection (e)(10)(A)(i) - (iii) of this section, services performed for a contracted rate from a private health care plan, services performed for an agreed upon rate from an individual, or services performed where payments received cover the cost of the care provided;

(D) standard charges must be comparable to the charges applied to services provided to all patients of the health care provider;

(E) partial payment is an amount that has been received toward uncompensated care charges that does not cover the cost of the services provided;

(F) total charges are charges for all health care services, including uncompensated care;

(G) records that clearly identify each patient, the procedure performed, and the standard charge for such a service, as well as payments received from each patient must be maintained by the health care provider for all uncompensated care;

(H) a corresponding adjustment must be made to reduce the cost of goods sold deduction or the compensation deduction for the portion of the cost of goods sold or compensation that has been excluded from revenue:

(i) the cost of goods sold deduction is reduced by subtracting the product of the cost of goods sold under §3.588 of this title (relating to Margin: Cost of Goods Sold) multiplied by the uncompensated care ratio;

(ii) the compensation deduction is reduced by subtracting the product of the compensation and benefits amounts under §3.589 of this title (relating to Margin: Compensation) multiplied by the uncompensated care ratio.

(2) (No change.)

(3) Health care institution--Means [Any of the following types of institutions:] an ambulatory surgical center; an assisted living

facility licensed under Health and Safety Code, Chapter 247; an emergency medical services provider; a home and community support services agency; a hospice; a hospital; a hospital system; an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the federal Social Security Act, §1915(c) (42 U.S.C. §1396n); a birthing center; a nursing home; an end stage renal disease facility licensed under Health and Safety Code, §251.011; or a pharmacy.

(4) - (14) (No change.)

~~[(15) Uncompensated care--Standard charges for the health care services provided by a health care provider, where the provider has not received any payment for health care provided to the patient.]~~

~~[(15) [(46)] United States government--Any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.~~

~~[(16) [(47)] United States government agency--An instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.~~

~~[(17) [(48)] United States government-sponsored agency--An agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.~~

(c) General rules for reporting total revenue.

(1) - (2) (No change.)

(3) Federal consolidated group. A taxable entity that is part of a federal consolidated group or is a disregarded entity shall compute its total revenue as if it had filed a separate return for federal income tax purposes; provided, however, that a disregarded entity may combine its revenue, cost of goods sold, compensation and gross revenue with its parent as provided by §3.590(d)(6) of this title (relating to Margin: Combined Reporting). Further information on combined entities can be found in §3.590 of this title ~~[(relating to Margin: Combined Reporting)]~~.

(4) (No change.)

(5) Exclusions from total revenue. Any expense [For any amount that is] excluded from total revenue (e.g. flow-through funds or the cost of uncompensated care allowed under subsection (e) of this section) [; the related costs] may not be included in the determination of cost of goods sold (see §3.588 of this title [(relating to Margin: Costs of Goods Sold)]) or the determination of compensation (see §3.589 of this title [(relating to Margin: Compensation)]).

(6) - (7) (No change.)

(8) Tiered partnership provision. This provision is not mandatory. Subject to the following subparagraphs, a ~~[Lower tier entities: A] lower tier entity in a tiered partnership arrangement may exclude from total revenue the amount of total [any] revenue reported to an upper tier entity. If a lower tier entity chooses to file under the tiered partnership provision, the lower tier entity may report total revenue to any or all of its upper tier entities. The total revenue reported to an upper tier entity must equal the upper tier entity's ownership percentage of the lower tier entity's entire total revenue. [Subject to the following paragraphs:]~~

(A) Reporting requirements. The lower tier entity must submit a report to the comptroller showing the amount of total revenue that each upper tier entity must [should] include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller showing the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity [taxable margin calculation; according to the ownership interest of the upper tier entity].

(B) Nontaxable upper tier entity. This paragraph does not apply to that percentage of the total revenue attributable to an upper tier entity by a lower tier entity if the upper tier entity is not subject to the tax under this chapter. In this case, the lower tier entity cannot report total revenue to the nontaxable upper tier entity and the lower tier entity cannot exclude this total revenue from its franchise tax report [is liable for the tax on its taxable margin].

(C) Eligibility for no tax due, discounts and the E-Z Computation. The no tax due thresholds, discounts and the E-Z Computation do not apply to an upper tier entity if, before the attribution of any total revenue by a lower tier entity to an upper tier entity under this section, the lower tier entity does not meet the criteria. See §3.584(d)(8) ~~[(6)]~~ of this title (relating to Margin: Reports and Payments).

(D) Not a partnership distribution. Total revenue reported from a lower tier entity to an upper tier entity under the provisions of Tax Code, §171.1015(b) is not a distribution from a partnership.

(E) Combined reporting. The tiered partnership provision is not an alternative to combined reporting. Combined reporting is mandatory for taxable entities that meet the ownership and unitary criteria. See §3.590 of this title. Therefore, the tiered partnership provision is not allowed if the lower tier entity is included in a combined group.

(F) Accounting period. If the lower tier entity and an upper tier entity have different accounting periods, the upper tier entity must allocate the revenue reported from the lower tier entity to the accounting period that the upper tier entity's report is based on.

(9) (No change.)

(d) (No change.)

(e) Exclusions from total revenue. Except as otherwise provided in this section and only to the extent included in the calculation of total revenue under subsection (d)(1) - (6) of this section, the following items shall be excluded from total revenue:

(1) - (2) (No change.)

(3) Principal repayments. A taxable entity that is a lending institution shall exclude the principal repayment of loans;

(4) - (6) (No change.)

(7) Staff leasing services company. A taxable entity that is a staff leasing services company shall exclude payments received

from a client company for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the employees assigned to [employees of] the client company. A staff leasing services company cannot exclude payments received from a client company for payments made to independent contractors assigned to the client company and reportable on Internal Revenue Service Form 1099;

(8) - (9) (No change.)

(10) Health care provider. A taxable entity that is a health care provider shall exclude:

(A) the total amount of payments, including co-payments and deductibles from the patient or supplemental insurance, received [(not to include any co-payments or deductibles received from the patient)]:

(i) - (iv) (No change.)

(B) (No change.)

(11) - (13) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



### 34 TAC §3.588

The Comptroller of Public Accounts proposes an amendment to §3.588, concerning margin: cost of goods sold.

Subsection (c)(2) is amended to add language to clarify that an election must be made to capitalize or expense allowable costs for the cost of goods sold. This paragraph is also amended to allow a beginning inventory only to taxable entities that elect to capitalize costs. A new paragraph (3) is added to clarify how a taxable entity elects to deduct the cost of goods sold to determine margin and what restrictions apply when amending that election. Subsequent paragraphs have been renumbered. Paragraph (4), regarding exclusions from total revenue, is amended to more narrowly interpret Tax Code, §171.1011(j). Only expenses excluded from total revenue may not be included in the determination of the cost of goods sold. Language that did not allow costs related to excluded revenue to be included in the determination of the cost of goods sold is deleted. Paragraph (11) is amended to include bars (drinking places) and beverages in this paragraph regarding the cost of goods sold allowed for restaurants.

Subsection (d)(5) regarding storage costs is amended to include language from the statute that disallows as storage costs those costs specifically disallowed in subsection (g).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing clarification to businesses subject to the franchise tax regarding the computation of cost of goods sold under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.101, 171.1011(j) and 171.1012.

§3.588. *Margin: Cost of Goods Sold.*

(a) - (b) (No change.)

(c) General rules for determining cost of goods sold.

(1) (No change.)

(2) Capitalization or expensing of certain costs. The election to capitalize or expense allowable costs is made by filing the franchise tax report using one method or the other. The election is for the entire period on which the report is based and may not be changed after the due date or the date the report is filed, whichever is later. A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Internal Revenue Code, §§263A, 460, or 471 (including a taxable entity subject to §471 that elects to use LIFO under §472), may elect to:

(A) Capitalize those costs in the same manner and to the same extent that the taxable entity capitalized those costs on its federal income tax return, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section. A taxable entity that elects to capitalize costs on its first report due on or after January 1, 2008, may [not] include, in beginning inventory, [any] costs allowable for franchise tax purposes that would be in beginning inventory for federal income tax purposes [incurred prior to the accounting period upon which the report is based].

(i) If the taxable entity elects to capitalize those costs allowed under this section as a cost of goods sold, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return.

(ii) If the taxable entity later elects to begin expensing those costs allowed under this section as a cost of goods sold, the entity may not deduct any cost incurred before the first day of the period on which the report is based, including any [in] ending inventory from a previous report.

(B) Expense those costs, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section.

(i) (No change.)

(ii) If the taxable entity later elects to begin capitalizing those costs allowed under this section as a cost of goods sold, [costs expensed on a previous report and] costs incurred prior to the accounting period on [upon] which the report is based may not be capitalized.

(3) Election to subtract cost of goods sold. A taxable entity, if eligible, must make an annual election to subtract cost of goods sold in computing margin by the due date, or at the time the report is filed, whichever is later. The election to subtract cost of goods sold is made by filing the franchise tax report using the cost of goods sold method.

(A) After the due date of the report, an amended report may not be filed to change the method of computing margin to the compensation deduction.

(B) An amended report may be filed to change the method of computing margin from the cost of goods sold deduction to 70% of total revenue or, if qualified, the E-Z Computation. See §3.584 of this title (relating to Margin: Reports and Payments).

(4) [(3)] Exclusions from total revenue. Any expense [Costs related to any amount] excluded from total revenue (see §3.587 of this title (relating to Margin: Total Revenue)) may not be included in the determination of cost of goods sold. [Costs related to an amount excluded from revenue must be determined on a reasonable basis.]

(5) [(4)] Film and broadcasting. A taxable entity whose principal business activity is film or television production or broadcasting or the sale of broadcast rights or the distribution of tangible personal property described by subsection (b)(9)(A)(ii) of this section, or any combination of these activities, and who elects to use cost of goods sold to determine margin, may include as cost of goods sold:

(A) the costs described in this section in relation to the property;

(B) depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including

(C) expenses for the right to broadcast or use the property.

(6) [(5)] Lending institutions. Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the public and elects to subtract cost of goods sold, the entity may subtract as a cost of goods sold an amount equal to interest expense.

(A) This paragraph does not apply to entities primarily engaged in an activity described by category 5932 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(B) For purposes of this subsection, an entity engaged in lending to unrelated parties solely for agricultural production offers loans to the public.

(7) [(6)] Mixed transactions. If a transaction contains elements of both a sale of tangible personal property and a service, a taxable entity may only subtract as cost of goods sold the costs otherwise allowed by this section in relation to the tangible personal property sold.

(8) [(7)] Owner of goods. A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. The determination of whether a taxable entity is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxable entity.

(A) A taxable entity furnishing labor or materials to a project for the construction, improvement, remodeling, repair, or industrial maintenance (as the term "maintenance" is defined in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance)), of real property

is considered to be an owner of the labor or materials and may include the costs, as allowed by this section, in the computation of goods sold.

(B) Solely for the purposes of this section, a taxable entity shall be treated as the owner of goods being manufactured or produced by the entity under a contract with the federal government, including any subcontracts that support a contract with the federal government, notwithstanding that the Federal Acquisition Regulations may require that title or risk of loss with respect to those goods be transferred to the federal government before the manufacture or production of those goods is complete.

(9) [(8)] Rentals and leases. Notwithstanding any other provision of this section, the following taxable entities may subtract as cost of goods sold the costs otherwise allowed by this section in relation to tangible personal property that the entity rents or leases in the ordinary course of business of the entity:

(A) a motor vehicle rental company that remits a tax on gross receipts imposed under Tax Code, §152.026 or a motor vehicle leasing company;

(B) a heavy construction equipment rental or leasing company; and

(C) a railcar rolling stock rental or leasing company.

(10) [(9)] Reporting methods. A taxable entity shall determine its cost of goods sold, except as otherwise provided by this section, in accordance with the methods used on the federal income tax return on which the report under this chapter is based. This subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(11) [(10)] Restaurants and bars. Entities engaged in activities described in Major Group 58 (Eating and Drinking Places) of the Standard Industrial Classification Manual may deduct for cost of goods sold only those expenses allowed under subsections (d), (e) and (f) of this section, that relate to the acquisition and production of food and beverages. Any costs related to both the production of food and beverages and to other activities must be allocated to production on a reasonable basis.

(d) Cost of goods sold. The cost of goods sold includes all direct costs of acquiring or producing the goods, including:

(1) - (4) (No change.)

(5) storage costs, including the costs of carrying, storing, or warehousing property, subject to subsection (g) of this section;

(6) - (13) (No change.)

(e) (No change.)

(f) Indirect or administrative overhead costs. A taxable entity may subtract as a cost of goods sold indirect or administrative overhead costs that it can demonstrate are allocable to the acquisition or production of goods. This amount may not exceed 4.0% of total indirect or administrative overhead cost.

(1) - (2) (No change.)

(3) Any costs excluded under subsection (g) of this section, may not be included [subtracted] under this subsection.

(g) Costs not included. The cost of goods sold does not include the following costs in relation to the taxable entity's goods:

(1) the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;

- (2) selling costs, including employee expenses related to sales;
- (3) distribution costs, including outbound transportation costs;
- (4) advertising costs;
- (5) idle facility expenses;
- (6) rehandling costs;
- (7) bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;
- (8) unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;
- (9) interest, including interest on debt incurred or continued during the production period to finance the production of the goods;
- (10) income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;
- (11) strike expenses, including costs associated with hiring employees to replace striking personnel, but not including the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes;
- (12) officers' compensation;
- (13) costs of operation of a facility that is:
  - (A) located on property owned or leased by the federal government; and
  - (B) managed or operated primarily to house members of the armed forces of the United States;
- (14) any compensation paid to an undocumented worker used for the production of goods; and
- (15) costs funded by a partnership contribution, to the extent that the contributing taxable entity made the cost of goods sold deduction under subsection (d)(13) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



### 34 TAC §3.589

The Comptroller of Public Accounts proposes an amendment to §3.589, concerning margin: compensation.

Language is added to subsection (b)(9)(A) to clarify that wages and cash compensation is the amount entered in the Medicare wages and tips box for the period on which the tax is based. Language is added to paragraph (9)(B) to clarify that wages and cash compensation includes net distributive income regardless of whether it is a positive or negative amount.

Language is added to subsection (c) regarding the calculation of compensation to reference subsection (i) of this section regarding the election to deduct compensation. Language is added to paragraph (1) to clarify that the \$300,000 per person limit on wages and cash compensation is per 12-month period on which the tax is based.

Language is added to subsection (d)(1) to clarify that payments made to independent contractors are those payments that are reportable on Internal Revenue Form 1099. Paragraph (2) regarding items excluded from compensation is amended to more narrowly interpret Tax Code, §171.1011(j) by deleting language that mandated that costs related to any amount excluded from total revenue may not be included in the determination of compensation. Language to clarify that only expenses that have been excluded from total revenue may not be included in the determination of compensation is added.

Subsection (f)(1), (2) and (3) regarding staff leasing companies have been reworded to clarify that the specified payments cannot be included as compensation. New paragraph (1)(D) is added to clarify that a staff leasing company cannot include as compensation payments made to independent contractors. Paragraph (3)(B) is added to clarify that the client company of a staff leasing company may not include as compensation payments made to the staff leasing company as reimbursement for payments made to independent contractors assigned to the client company.

New subsection (i) is added to clarify how and when a taxable entity elects to deduct compensation to determine margin and what restrictions apply when amending that election.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying to businesses subject to the franchise tax regarding the computation of compensation under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.101, 171.1011(j) and 171.1013.

#### §3.589. *Margin: Compensation.*

- (a) (No change.)
- (b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) - (8) (No change.)
  - (9) Wages and cash compensation--

(A) the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information for the period on which the tax is based;

(B) the amount of net distributive income, regardless of whether cash or property pertaining to such income is actually distributed and regardless of whether it is a positive or negative amount, from one of the following entities to partners or owners during the accounting period but only if the person receiving the amount is a natural person:

(i) - (iii) (No change.)

(C) (No change.)

(c) Compensation. Subject to Tax Code, §171.1014, a taxable entity that elects to subtract compensation (see subsection (i) in this section) for the purpose of computing its taxable margin under Tax Code, §171.101, may subtract an amount equal to:

(1) subject to subsection (d) of this section, all wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners and employees. The taxable entity cannot subtract more than \$300,000 per 12-month period on which the tax is based, or the amount determined under Tax Code, §171.006, for any one person in wages and cash compensation it determines under Tax Code, §171.101. See §3.590 of this title (relating to Margin: Combined Reporting); and

(2) (No change.)

(d) Compensation - excluded items. Compensation does not include:

(1) payments made to independent contractors and reportable on Internal Revenue Form ~~Forms~~ 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement);

(2) exclusions from total revenue. See §3.587 of this title (relating to Margin: Total Revenue). Any expense ~~related to any amount~~ excluded from total revenue may not be included in the determination of compensation~~[- The compensation related to an amount excluded from revenue must be determined on a reasonable basis];~~

(3) - (5) (No change.)

(e) (No change.)

(f) Staff leasing companies. See §3.587 of this title.

(1) A staff leasing company cannot include as compensation ~~subtract~~ the following payments for assigned employees:

(A) (No change.)

(B) payroll taxes; ~~and~~

(C) employee benefits including workers' compensation; ~~and~~[-]

(D) payments made to independent contractors and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(2) A client company can include as compensation ~~subtract~~ the following amounts for assigned employees:

(A) - (B) (No change.)

(3) A client company cannot include as compensation ~~subtract~~ the following:

(A) an administrative fee; ~~and~~

(B) payments made to a staff leasing company as reimbursement for payments made to independent contractors assigned to the client company and reportable on Internal Revenue Service Form 1099 (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement); and

(C) ~~(B)~~ other costs.

(4) (No change.)

(g) - (h) (No change.)

(i) Election to subtract compensation. A taxable entity must make an annual election to subtract compensation in computing margin by the due date or at the time the report is filed, whichever is later. The election to subtract compensation is made by filing the franchise tax report using the compensation method.

(1) After the due date of the report, an amended report may not be filed to change the method of computing margin from the compensation deduction to the cost of goods sold deduction.

(2) An amended report may be filed to change the method of computing margin from the compensation deduction to 70% of total revenue or, if qualified, the E-Z Computation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



### 34 TAC §3.590

The Comptroller of Public Accounts proposes an amendment to §3.590, concerning margin: combined reporting.

Subsection (b)(2)(E), which states that insurance companies that pay gross premiums tax that are not included in a combined group, is unnecessary and is deleted. Section 3.583(d)(1) of this title (relating to Margin: Exemptions) states that insurance companies that are subject to the gross premiums tax are exempt from payment of the franchise tax and §3.590(b)(2)(B) states that a combined group may not include any exempt entity. The subsequent subparagraphs have been renumbered.

Subsection (b)(4)(B)(vi), a controlling interest example, is amended to clarify that the ownership percentages of the partnership are equal. A controlling interest example is added as paragraph (4)(B)(vii) to clarify that two individuals that each own 50% of two different partnerships would not constitute controlling interest, as neither individual owns more than 50% of each partnership. Language is added to paragraph (4)(C), (D), (E) and (F) to identify the information contained in these subparagraphs. Paragraph (5)(A) is amended to restrict the



reporting entity to a parent entity that is part of the combined group, rather than the unitary business.

Subsection (d)(4) is amended to delete the election language for the use of the 70% of revenue calculation because no election is necessary. Language was added to clarify that the use of the E-Z Computation is only allowed for qualifying taxable entities. Language is added to paragraph (6) to identify the information contained in the paragraph. Subsection (d)(5)(C)(i) and (ii) are amended to clarify that a member of a combined group that does not have nexus individually must report, for information purposes only, the member's gross receipts from business done in this state and the member's gross receipts from business done in this state that are subject to taxation in another state under a throwback law.

Subsection (f)(2) is amended to correctly note that members of a combined group with different accounting periods must prepare a separate income statement based on federal income tax reporting methods, not the books and records of the taxable entity as originally noted.

Language is added to subsection (i) to identify the information contained in the subsection.

Subsection (j) is amended to include not only information on the tax rate, but also information on the discounts from tax liability and the E-Z Computation. Language that allows a combined group to file a no tax due report is deleted.

New subsection (k) is added to clarify the reporting requirements for a combined group. A combined group will file only annual reports. Members of a combined group that join or leave the combined group during the accounting period may be required to file separate initial, annual, and final reports. Examples are included.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing clarification to businesses filing combined reports under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.0011, 171.002, 171.0021, 171.1014, 171.1016, 171.152, 171.1532, 171.201, and 171.202.

*§3.590. Margin: Combined Reporting.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014.

(A) - (D) (No change.)

~~{(E) Insurance companies that pay gross premiums tax are not included in a combined group.}~~

(E) ~~{(F)}~~ Passive entities are not included in the combined group; however, the pro rata share of net income from a passive entity shall be included in total revenue to the extent it was not generated by the margin of another taxable entity.

(3) (No change.)

(4) Controlling interest.

(A) (No change.)

(B) Examples are as follows:

(i) - (v) (No change.)

(vi) Partnership P is owned equally by Limited Liability Company A, Limited Liability Company B and Limited Liability Company C. Three[;] unrelated individuals each wholly owns one of the limited liability companies. None of the limited liability companies owns more than 50% of Partnership P. There is no controlling interest.

(vii) Individual A and Individual B each owns 50% of Partnership X. Individual A and Individual B each also owns 50% of Partnership Y. Individual A and Individual B are not husband and wife. Since neither individual owns more than 50% of each partnership, neither individual has a controlling interest in the partnerships.

(C) Other circumstances. In addition to the foregoing tests, the comptroller may consider any other ~~circumstances~~ [circumstance] that ~~tend~~ [tends] to demonstrate that the more than 50% direct or indirect common ownership test was met or was not met.

(D) Membership termination. Membership in an affiliated group shall be treated as terminated in any year, or fraction thereof, in which the conditions listed in this paragraph are not met, except as follows:

(i) - (ii) (No change.)

(E) Attribution. Except as otherwise provided, an entity is owned when a controlling interest is directly held or the interest is constructively owned. An individual constructively owns stock that is owned by his or her spouse.

(F) Membership in more than one group. If an entity is a member of more than one affiliated group, the entity is treated as a member of the affiliated group (or part thereof) with respect to which it has a unitary relationship. If the entity has a unitary relationship with more than one of those affiliated groups, it shall elect to be treated as a member of only one group. The election shall remain in effect until the unitary business relationship between the entity and the other members ceases, or unless revoked with approval of the comptroller.

(5) Reporting entity--The combined group's choice of an entity that is:

(A) the parent entity, if it is part of the combined group [unitary business], or

(B) (No change.)

(6) - (7) (No change.)

(c) (No change.)

(d) Determination of combined taxable margin and apportionment.

(1) - (3) (No change.)

(4) Combined groups are eligible ~~[to elect]~~ to use the 70% of revenue calculation pursuant to Tax Code, §171.101 or, if qualified, the E-Z Computation pursuant to Tax Code, §171.1016. See §3.584 of this title (relating to Margin: Reports and Payments).

(5) Combined apportionment.

(A) - (B) (No change.)

(C) For each member of the combined group that does not have nexus individually with this state for purpose of taxation, a combined group must, for information purposes only, include in a report filed under Tax Code, §171.201 or §171.202:

(i) the member's gross receipts from business done in this state ~~[computed under subparagraph (B) of this paragraph]~~; and

(ii) the member's gross receipts from business done in this state ~~[computed under subparagraph (B) of this paragraph]~~ that are subject to taxation in another state under a throwback law or regulation.

(D) (No change.)

(6) Disregarded entities. When reporting revenue, cost of goods sold, compensation and gross receipts for a disregarded entity, that information may be included with the parent; in that event, both entities are presumed to have nexus.

(e) (No change.)

(f) Accounting period of the combined group.

(1) (No change.)

(2) Members with different accounting periods. If the federal taxable period of a member differs from the federal taxable period of the combined group, the reporting entity will determine the portion of that member's revenue, cost of goods sold, compensation, etc. to be included by preparing a separate income statement based on federal income tax reporting methods ~~[prepared from the books and records]~~ for the months included in the group's accounting period.

(g) - (h) (No change.)

(i) Standard Industrial Classification Code. For a combined group, the revenue from each retail and wholesale trade activity of each of the members of the combined group shall be aggregated for purposes of determining whether the combined group is engaged in retail or wholesale trade. The determination of whether a combined group is engaged in a retail or wholesale trade activity shall be made after eliminations.

(j) Tax rate, discounts, and E-Z Computation. The determination of whether a combined group ~~[entity]~~ is eligible for the 0.5% ~~[a lower]~~ tax rate, discounts from tax liability, and the E-Z Computation ~~[or to file a no tax due report]~~ under Tax Code, §§171.002, 171.0021, and 171.1016, shall be made for the combined group as a whole after eliminations. See §3.584 of this title (relating to Reports and Payments).

(k) Combined report filing. A taxable entity will only be included in a combined group report for the accounting period in which it belongs to the combined group.

(l) Initial reports.

(A) Combined groups. A combined group will not file an initial report. For the period that a combined group exists, the com-

bined group will file only annual reports regardless of whether the reporting entity or any or all of the members of the combined group would have been required to file an initial report if filing as a separate entity.

(B) Members of a combined group.

(i) A newly-formed member of a combined group will not report its data on a separate initial report but will include its data with the combined group's report for the corresponding accounting period. If a member of a combined group receives a franchise tax initial report filing notice, the entity must return the notice to the comptroller identifying the reporting entity of the combined group unless the entity is required to file a separate initial report under clause (ii) or (iii) of this subparagraph.

(ii) A newly formed member of a combined group that leaves the combined group during the accounting period that would be covered by its initial report is required to file a separate initial report for the period beginning on the date it leaves the group through the date of its normal accounting year end that is at least 60 days prior to the original due date of its initial report. Example: Corporation A is formed on April 3, 2008 as a member of Combined Group Z. It is spun off as a separate non-unitary entity effective August 15, 2008. The normal accounting year end for all parties is December 31. Corporation A will file a 2009 initial report due July 1, 2009 for August 15, 2008 - December 31, 2008, the period after the spin-off of the corporation. Combined Group Z will file a 2009 annual report including Corporation A for April 3, 2008 - August 14, 2008, the period before the spin-off of the corporation.

(iii) A newly-formed entity that is subsequently acquired by a combined group is required to file a separate initial report for the period that is prior to the acquisition date. Example: Corporation A is a separate entity that was formed on November 15, 2007 and has a June 30 accounting year end. Corporation A was acquired by Combined Group Z effective February 1, 2008. Combined Group Z has a December 31 accounting year end. Corporation A will file a 2009 initial report due February 12, 2009. Because Corporation A was acquired by Combined Group Z effective February 1, 2008, Corporation A will include only the period from November 15, 2007 - January 31, 2008 on its initial report. Combined Group Z will file a 2009 annual report including Corporation A for the period February 1, 2008 - December 31, 2008.

(2) Annual reports.

(A) Combined groups. For the period that a combined group exists, the combined group will file only annual reports.

(B) Members of a combined group. For any accounting period that an entity is not part of a combined group, the entity must file a separate report. Example: Corporation B is a separate entity from January 1, 2008 - June 30, 2008. Corporation B was acquired by Combined Group X effective July 1, 2008. Combined Group X has a March 31 accounting year end. Corporation B is sold by Combined Group X to Combined Group Y effective October 1, 2008. Combined Group Y has a December 31 accounting year end. Corporation B will file a 2009 annual report for the period January 1, 2008 - June 30, 2008. Combined Group X will file a 2009 annual report for the period April 1, 2007 - March 31, 2008. Combined Group X will not include Corporation B in its 2009 annual report because Corporation B was not part of the combined group during the accounting period on which the report is based. Combined Group X will include Corporation B in its 2010 annual report for the period July 1, 2008 - September 30, 2008. Combined Group Y will file a 2009 annual report for the period January 1, 2008 - December 31, 2008 and will include Corporation B for the period October 1, 2008 - December 31, 2008.

(3) Final reports.

(A) Combined groups. A combined group will not file a final report. For the period that a combined group exists, the combined group will file only annual reports.

(B) Members of a combined group.

(i) A member of a combined group that ceases doing business in Texas will not file a final report. The data that would have been reported on the final report will be included in the combined group's annual report for the corresponding accounting period. If a member of a combined group receives a franchise tax final report filing notice, the entity must return the notice to the comptroller identifying the reporting entity of the combined group unless the entity is required to file a separate final report under clause (ii) or (iii) of this subparagraph.

(ii) A separate entity that joins a combined group and then ceases doing business in Texas in the accounting period that would be covered by a final report is required to file a final report for the period that is prior to the acquisition date. The period from the acquisition date through the date the entity ceased doing business in Texas will be reported on the combined group's annual report for the corresponding period. Example: Corporation C is a separate entity that has a December 31 accounting year end. Corporation C was acquired by Combined Group W effective July 1, 2008. Combined Group W also has a December 31 accounting year end. On October 31, 2008 Corporation C is dissolved. Corporation C will file a final report due December 30, 2008 for the period January 1, 2008 - June 30, 2008, which is the period before Corporation C was purchased by Combined Group W. Combined Group W will file a 2009 annual report and include Corporation C for the period July 1, 2008 - October 31, 2008.

(iii) A member of a combined group that leaves the combined group and then ceases doing business in Texas during the accounting period that would be covered by a final report is required to file a final report for the period from the date the entity left the combined group through the date that the entity ceased doing business in Texas. Example: Corporation C is a member of Combined Group W. Both Corporation C and Combined Group W have a September 30 accounting year end. Corporation C leaves the combined group effective May 1, 2008. On August 15, 2008, Corporation C is dissolved. Corporation C will file a final report due October 14, 2008 for the period May 1, 2008 - August 15, 2008, which is the period after Corporation C left Combined Group W. Combined Group W will file a 2009 annual report and will include Corporation C for the period October 1, 2007 - April 30, 2008.

(4) Electronic funds transfer. If any one member of a combined group receives notice that it is required to electronically transfer franchise tax payments, then the combined group is required to electronically transfer payments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805607

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 475-0387

◆ ◆ ◆  
**34 TAC §3.592**

The Comptroller of Public Accounts proposes an amendment to §3.592, concerning margin: additional tax.

Subsection (e) is amended to delete reference of final report information for combined groups. Detailed information on final reporting for combined groups is being addressed in §3.590, which is also being amended.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in deleting unneeded language regarding final reports under Tax Code, Chapter 171. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This rule is amended under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.0011.

§3.592. *Margin: Additional Tax.*

(a) - (d) (No change.)

(e) Combined group reports. See §3.590 of this title (relating to Margin: Combined Reporting). [An entity that is part of a combined report must file a final report when the entity is no longer subject to the tax to tell the comptroller the name of the reporting entity. No financial data would be included on the report, unless the entity becoming no longer subject to the tax is the reporting entity.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805608

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 936-6472

◆ ◆ ◆  
**34 TAC §3.594**

The Comptroller of Public Accounts proposes an amendment to §3.594, concerning margin: temporary credit for business loss carryforwards.

Subsection (c)(4), an example of the credit calculation for a combined group, is amended to correct mathematical errors.

Subsection (g), regarding credit carryover, is amended to reflect a change in policy. The revised policy applies the temporary credit to the franchise tax due only if the tax due exceeds \$1,000. The prior policy, which required the credit to be used to the extent that there was any positive amount of tax due, is deleted.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing clarification to businesses using the temporary credit for business loss carryforwards under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.111.

§3.594. *Margin: Temporary Credit for Business Loss Carryforwards.*

(a) - (b) (No change.)

(c) Eligibility.

(1) - (3) (No change.)

(4) Example. Corporation A, corporation B, corporation C and corporation D are members of a combined group. They have business loss carryforwards of \$2,000,000, \$2,000,000, \$2,000,000, and \$4,000,000 respectively. In 2008, the combined group's credit will be  $\$10,000,000 \times 2.25\% \times 4.5\%$  equaling \$10,125. The combined group's tax due before the credit is \$9,000 which results in a carryover of \$1,125 [\$1,025]. During 2008, corporation D leaves the group. On the 2009 report, the combined group is entitled to a credit of  $\$6,000,000 \times 2.25\% \times 4.5\%$  equaling \$6,075 [\$5,075]. In addition, the group only has \$675 [\$615] of the carryover credit. They lost the 40% that was related to corporation D. However, if corporation D had merged into corporation C during 2008 instead of leaving the group, the combined group's credit will remain \$10,125 for 2009 and there will still be a \$1,125 [\$1,025] carryover from 2008.

(5) (No change.)

(d) - (f) (No change.)

(g) Credit carryover. The amount of credit claimed on any report may not exceed the amount of franchise tax due for that report year. The credit is applied to the franchise tax due only if the tax due exceeds \$1,000. [A credit must be used to the extent that there is any positive amount of tax due even if the calculated tax due is less than \$1,000 and the entity will not owe any tax.] Unused credits may be carried over to subsequent report years unless subsection (e)(2) of this section applies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805609

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 475-0387

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 27. CRIME RECORDS

##### SUBCHAPTER I. SECURE ELECTRONIC MAIL, ELECTRONIC TRANSMISSIONS AND FACSIMILE TRANSMISSIONS

###### 37 TAC §27.111

The Texas Department of Public Safety proposes new §27.111, concerning Secure Electronic Mail, Electronic Transmissions and Facsimile Transmissions. The new section is necessary in order to implement provisions of Texas Government Code, Chapter 411, directing the Texas Department of Public Safety in consultation with the Office of Court Administration of the Texas Judicial System to adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions and facsimile transmissions.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure the security, accuracy and completeness of transactions of information relating to nondisclosure of deferred adjudications and the expunction of criminal records.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Louis Beaty, Manager, Crime Records Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5836.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.081(g-1a).

Texas Government Code, §411.081 and Texas Code of Criminal Procedure, Article 55 are affected by this proposal.

§27.111. Minimum Standards.

(a) The minimum standards contained in this title apply to secure electronic mail, electronic transmissions and facsimile transmissions arising under the provisions of Texas Government Code, §411.081.

(b) The minimum standards for each method of transmission are as follows:

(1) Secure Electronic Mail--To secure electronic mail and any attachments, the email and the attachments are required to be encrypted using either the Advanced Encryption Standard (AES) or the Triple Data Encryption Standard (3DES) encryption algorithms with a key length of at least 128 bits.

(2) Electronic Transmissions--To transmit a file electronically, the data are required to be encrypted using either the Advanced Encryption Standard (AES) or the Triple Data Encryption Standard (3DES) encryption algorithms with a key length of at least 128 bits.

(3) Facsimile Transmissions--To transmit the file by a facsimile machine, the sender is required to first call the recipient and confirm the person is standing at the facsimile machine or the facsimile machine is located in a secure area, and will ensure that once received, the information will not be exposed to unauthorized viewing or disclosure. After the sender confirms the receiver is ready, the facsimile transmission may start.

(c) Examples of acceptable implementations conforming to the above minimum standards may be obtained directly from the Crime Records Service CJIS Security Office or electronically from the World Wide Web at [http://txdps\\_qa/administration/crime\\_records/pages/securetransmissions.htm](http://txdps_qa/administration/crime_records/pages/securetransmissions.htm).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2008.

TRD-200805589

Stanley E. Clark

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 424-2135



## SUBCHAPTER J. UNIFORM CRIME REPORTING

### 37 TAC §27.121

The Texas Department of Public Safety proposes new §27.121, relating to Sexual Assault Reporting. The new section is necessary in order to implement provisions of Texas Government Code, §411.042, directing the Texas Department of Public Safety, in consultation with statewide, nonprofit sexual assault programs, to establish rules and procedures to ensure law enforcement agencies report sexual assault offenses in the proper form and manner and at regular intervals.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure the accuracy and completeness of information reported by law enforcement agencies and to ensure the promptness of information reporting.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Louis Beaty, Manager, Crime Records Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5836.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.042(i).

Texas Government Code, §411.004(3) and §411.042(i) are affected by this proposal.

§27.121. Sexual Assault Reporting.

(a) Section 411.042, Texas Government Code, mandates that a law enforcement agency shall report offenses under §22.011 and §22.021, Penal Code, to the Texas Department of Public Safety. The Department shall create a statistical breakdown of these offenses.

(b) Information collected by the local law enforcement agency must include information indicating the specific offense committed and information regarding:

- (1) the victim;
- (2) the offender's age, sex, race, and ethnic origin;
- (3) the offender's relationship to the victim;
- (4) the number of victims and the number of offenders;
- (5) the offender's age, sex, race, and ethnic origin;
- (6) any weapons used or exhibited in the commission of the offense;
- (7) any injuries sustained by the victim;
- (8) the location of the offense;
- (9) the incident date and time.

(c) For purposes of this report, the following Texas Penal Code offense classifications will be collected:

- (1) §21.02--Continuous sexual abuse of young child or children;
- (2) §21.11(a)(1)--Indecency with a child by contact;
- (3) §21.11(a)(2)--Indecency with a child by exposure;

- (4) §22.011--Sexual Assault;
- (5) §22.021--Aggravated sexual assault;
- (6) §43.25--Sexual performance by a child.

(d) Reports should be forwarded to the Department on a monthly basis using the method and form approved by the Department Uniform Crime Reporting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 23, 2008.

TRD-200805590

Stanley E. Clark

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 7, 2008

For further information, please call: (512) 424-2135

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER F. RECORDS KEEPING

###### 22 TAC §573.52

The Texas Board of Veterinary Medical Examiners withdraws the proposed amendment to §573.52 which appeared in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5464).

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805647

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: October 27, 2008

For further information, please call: (512) 305-7563

###### 22 TAC §573.54

The Texas Board of Veterinary Medical Examiners withdraws the proposed new §573.54 which appeared in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5466).

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805648

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: October 27, 2008

For further information, please call: (512) 305-7563

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS SUBCHAPTER D. POWERS OF CREDIT UNIONS

##### 7 TAC §91.405

The Credit Union Commission adopts amendments to 7 TAC §91.405, Records Retention and Preservation, without changes to the text published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5198). The amendments allow credit unions to choose the format for retaining records, provided that the records are maintained in a sufficiently detailed and retrievable manner. The amendments eliminate the requirement that certain records be maintained permanently in their original form and delete the requirement that the credit union obtain a legal opinion on its method of retaining records. The amendments also make non-substantive edits to some of the language.

The amendments are adopted to update the rule.

The Commission received no comments with respect to these rule amendments. A public hearing on the amendments was held at the Texas State Capitol, Capitol Extension Room E2.010, on September 23, 2008 at 9:00 am. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §123.110, concerning records.

The specific section affected by the amended rule is Texas Finance Code, §123.110.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805632

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: November 16, 2008

Proposal publication date: July 4, 2008

For further information, please call: (512) 837-9236

### PART 8. JOINT FINANCIAL REGULATORY AGENCIES

#### CHAPTER 151. HOME EQUITY LENDING PROCEDURES

##### 7 TAC §§151.1, 151.3, 151.7, 151.8

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly adopt amendments to interpretations 7 TAC §§151.1, 151.3, 151.7, and 151.8, relating to home equity lending procedures under Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3). The rules are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5199).

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §11.308 and §15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the home equity lending procedures codified in 7 TAC Chapter 151.

In general, the purpose of the adopted amendments to §§151.1, 151.3, 151.7, and 151.8 is to implement technical corrections resulting from the commissions' review of Chapter 151. The individual purposes of the amendments to each section are provided in the following paragraphs.

The adopted amendment to §151.1, concerning Application for Interpretation, serves to update the title of one of the joint financial regulatory agencies. The current title of "Department of Savings and Mortgage Lending" is adopted to replace the former "Savings and Loan Department."

The adopted amendments to §151.3, concerning Initiation of Interpretation Procedure, provide consistency in a phrase used throughout the section. In subsections (d) and (e), the phrase "advance notice" is adopted to replace the past tense "advanced notice," in order to maintain consistency with existing subsection (c) and use of preferred grammar.



The adopted amendments to §151.7, concerning Adoption of Interpretation, are also for consistency purposes. The first sentence and paragraph (1)(C) of §151.7 list actions being taken by the "Finance Commission and Credit Union Commission." Amendments to paragraphs (2) and (3) are adopted to continue use of that language to maintain parallel phrasing throughout the section.

The adopted amendments to §151.8, concerning Savings Clause and Severability, provide clarity so that the rule will be easier to understand. Throughout the section, the phrase "this rule" is used. The commissions adopt that "any interpretation adopted under Chapters 151, 152, and 153 of this title" replace "this rule" in all occurrences to reflect the most accurate wording. In addition, the word "that" is unnecessary and is adopted for deletion from the last sentence.

The commissions received no written comments on the proposal.

The amended interpretations are adopted pursuant to Texas Finance Code, §11.308 and §15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3) are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805617

Leslie L. Pettijohn

Executive Director, Finance Commission

Joint Financial Regulatory Agencies

Effective date: November 13, 2008

Proposal publication date: July 4, 2008

For further information, please call: (512) 936-7621



## CHAPTER 153. HOME EQUITY LENDING

### 7 TAC §§153.11 - 153.14, 153.51, 153.95

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly adopt amendments to interpretations 7 TAC §§153.11 - 153.14, 153.51, and 153.95 relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3). The commissions adopt the amendments to §§153.11 - 153.14 and 153.51 with changes and adopt the amendments to §153.95 without changes to the proposal published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5200).

The commissions received two comments on the proposal from Black, Mann & Graham, L.L.P. and the Independent Bankers Association of Texas (IBAT). The comment from Black, Mann & Graham provides specific recommendations to improve the clarity and consistency of the rules. The comment from IBAT is in full support of the amendments and includes one clarification question. The specific comments are addressed following the individual purpose of the provision at issue. Revisions made in

response to comments are summarized following the particular purpose of the rule to reflect changes made since the proposal.

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §11.308 and §15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the home equity lending interpretations codified in 7 TAC Chapter 153.

The purpose of the amendments to §§153.11, 153.14, 153.51, and 153.95 is to implement changes resulting from the commissions' review of Chapter 153. The changes serve to provide clarification to both borrowers and lenders regarding certain aspects of home equity lending transactions. For the complete responses to the comments received by the commissions regarding the review of Chapter 153, please see the adopted rule review notice published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5352).

Section 50 was amended effective December 4, 2007, pursuant to voter approval of Proposition 8 (House Joint Resolution Number 72), proposed in the 80th Texas Legislative Session. The purpose of the amendments to §153.12 and §153.13 is to conform with the constitutional changes in Section 50. The individual purposes of the amendments to each section are provided in the following paragraphs.

As a result of comments received in response to the review of Chapter 153, the amendments to §153.11 clarify how to calculate the constitutional period of "two months" in relation to the repayment schedule. The commissions add paragraph (1), which states: "The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing." Second, the commissions also add new paragraph (2), which provides that "a month is the period from a date in a month to the corresponding date in the succeeding month." Following this basic definition are two examples to address months with different numbers of days. In addition, the existing paragraphs have been renumbered accordingly.

The definition of "month" and corresponding examples track those provided under Texas Finance Code, Subtitle B, §341.002. While the majority of home equity loans are subject to Subtitle A of the Texas Finance Code, there are some home equity loans that do fall under Subtitle B. Thus, in order to avoid any inconsistency for those Subtitle B home equity loans, the commissions believe that use of the same principles found in §341.002 concerning the calculation of a month as contained in §153.11(2) is most appropriate.

In response to an informal comment received, the citation contained in the introductory paragraph of §153.11 has been corrected. The citation in the first sentence now correctly refers to "Section 50(t)" concerning home equity lines of credit.

Also regarding the introductory paragraph, one commenter requests that after "date" the phrase "the extension of credit is made" be deleted and replaced with "of closing" to avoid a possible conflict with proposed §153.11(1). The introductory paragraph of §153.11 is a partial restatement of Section 50(a)(6)(L)(i), as acknowledged by the commenter. The language suggested for deletion tracks the Texas Constitution, as is the case for most of the home equity interpretations. The commissions do not

see a conflict between the language the commenter requests to delete and that of proposed §153.11(1). Accordingly, the commissions decline the commenter's suggestion in order to maintain consistency with constitutional language and other home equity interpretations.

In conjunction with the comment offered regarding the introductory paragraph, the commenter then states that proposed §153.11(1) would no longer be necessary and that it should be deleted. Alternatively, the commenter suggests a revision to §153.11(1), referencing the suggested change in the introductory paragraph. The commissions believe that the language in proposed §153.11(1) provides a clear explanation of when the two month time period begins and does not present a conflict with the constitutional language contained in the introductory paragraph. The commissions decline this revision for the same reasons stated for declining the corresponding change to the introductory paragraph. Therefore, aside from the citation correction noted earlier, the commissions maintain the introductory paragraph and §153.11(1) for this adoption.

In a separate rule adoption published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5295), the commissions amended §153.22 to clarify that one copy of documents required by Section 50(a)(6)(Q)(v) may be provided to married owners. The amendment to §153.12 is a conforming change, by adding a similar sentence to §153.12 as that added to §153.22.

Regarding the proposed addition to §153.12, the commenter believes that the use of "these documents" is confusing, as "[t]he only document mentioned in §153.12 that Section 50(a)(6)(M)(i) requires to be provided to the owner is the consumer disclosure. The other document . . . [i.e., the loan application] is submitted to the lender by the owner, not vice versa." The commenter suggests that "these documents" be replaced with "the required consumer disclosure." The commissions agree that the commenter's recommendation provides the most accurate wording. Thus, for this adoption, the commissions have deleted "these documents" in the new second sentence and replaced those words with "the required consumer disclosure," as suggested by the commenter.

The commenter states: "The last two sentences of the [introductory] paragraph of §153.12 contain statements that incorrectly interpret the closing date requirement of Section 50(a)(6)(M)(i) to be based only on the date the consumer disclosure is provided to the owner." The commenter believes that these last two sentences should be amended to match the first sentence, which correctly states that "the closing date is based on the later of the date the owner submits a loan application to the lender or the date the lender provides the consumer disclosure to the owner." The current wording contained in the last two sentences of the introductory paragraph to §153.12 was written with the factual assumption that the loan application had already been submitted by the owner to the lender. The commissions do, however, recognize how these sentences could be interpreted as stated by the commenter. For the best clarity, the commissions agree with the suggested revisions to §153.12 and have incorporated the commenter's wording into this adoption.

The amendments to §153.13 clarify several issues regarding preclosing disclosures. As a result of comments received on a previous proposal, the commissions have determined that the following revisions are more appropriately included in §153.13, as opposed to the originally proposed location in §153.51. The previously proposed amendments to §153.51 were withdrawn. First, the lender's obligation to provide a copy of the application

at least one business day prior to closing, if not previously provided, has been added as required by amended Section 50(a)(6)(M)(ii). Second, new paragraph (1) is being added in order to define "preclosing disclosure" as "a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing." Third, the addition of new paragraph (2) is intended to implement the following legislative intent, as stated by Representative Burt Solomons: "[O]ne day prior to closing, the lender is required to give the homeowner a copy of the loan application, and a final, itemized disclosure of all the actual fees, points, interest, costs, and charges that would be charged at closing. This copy of the loan application is the *most current version* that the borrower reviews for accuracy before the closing." H.J. OF TEX., 80th Leg., R.S. 2431-32 (2007) (emphasis added). Thus, new §153.13(2) states: "The copy of the loan application submitted to the owner in satisfaction of the preclosing disclosure requirement must be the most current version at the time the document is delivered."

For consistency, the commenter requests that the title of §153.13 be amended so that it is singular to match the defined term "preclosing disclosure," as used in the body of the rule. The commissions agree that the singular form of the term in question should be used in a consistent manner throughout the section. Therefore, the commissions have decided to amend the title of §153.13 to the singular form, i.e. "Preclosing Disclosure," to maintain the singular use of this term in all occurrences.

Also for consistency purposes, the commenter believes that the word "documentation" should be replaced with "preclosing disclosure" in the last sentence of the introductory paragraph. The commissions agree that the commenter's suggestion would maintain consistency of terminology throughout the section. Thus, the commissions have deleted the word "documentation" and replaced it with the term "preclosing disclosure" in both occurrences in the last sentence of the introductory paragraph of §153.13.

To maintain consistency with constitutional language and the introductory paragraph of §153.13, the commenter suggests that the words "a copy of" be deleted before the words "a final itemized disclosure." The commissions agree that the revisions suggested by the commenter better track the constitutional language. Thus, the words "a copy of" have been deleted before the phrase "a final itemized disclosure" in §153.13(1) and (3) for this adoption.

At the beginning of the definition of "preclosing disclosure" contained in §153.13(1), the commenter recommends adding the clarifying phrase that it "means individually and collectively, as the context may require." The commissions believe the wording suggested by the commenter would be confusing. The proposed wording already accounts for situations where the context only refers to one document, i.e. "if not previously provided" in reference to the loan application. Accordingly, the commissions decline the commenter's suggested amendment to the definition in §153.13(1).

In order to implement the legislative intent of Representative Solomons, the commenter requests that §153.13(2) be revised "to clarify the words 'most current version' to mean a loan application that is substantially accurate." The commenter indicates that loan applications that are "retyped for legibility or [ ] amended to correct minor errors" would be "substantially accurate." The commissions agree that if a previously provided application contains *the same information*, then another copy would not have

to be provided. It follows that applications retyped for legibility and those with changed formatting would contain the same information and would satisfy the requirement. The commissions, however, disagree with the commenter's use of the example of amendments made "to correct minor errors," because such applications would contain different information. Therefore, the commissions have amended §153.13(2) by adding two new sentences at the end, as follows: "The lender is not obligated to provide another copy of the loan application if the only difference from the version previously provided to the owner is formatting. The lender is not obligated to give another copy of the loan application if the information contained on the more recent application is the same as that contained on the application of which the owner has a copy."

The commenter offers several suggestions regarding internal clarity and consistency of wording as contained in comments numbered (6) through (9) concerning §153.13. The commissions proposed the provisions related to the commenter's suggestions numbered (6) - (9) with "No change"; thus, these provisions were not included in the proposal. Consequently, the commissions are unable to consider these comments at this time. The commissions will, however, make note of these suggestions and may consider them with future rulemaking.

The fourth revision to §153.13 includes amendments to paragraph (3) (former paragraph (1)) which serve to clarify that by providing a properly completed Form HUD-1 or HUD-1A, a lender may satisfy the disclosure requirement of providing a final itemized disclosure. Thus, the lender is still required to provide a copy of the loan application, if not previously provided. And finally, the existing paragraphs have been renumbered accordingly.

A commenter poses the following clarification question regarding the HUD-1 or HUD-1A addition to §153.13: "[S]ome lenders have asked whether the itemized disclosure requirement can be satisfied by providing disclosure that includes the per diem interest. In some cases, closing has been delayed at the request of the borrower. In that event, the actual interest on the HUD-1A is incorrect. A new HUD-1A is provided resulting in a delay of not one day, but at least two. Would providing the per diem interest satisfy the disclosure of the 'actual' interest?" The commissions believe that the answer to the commenter's question is yes. Providing the interest amount as of the date of the HUD-1A and providing the per diem interest to account for any days of delay would satisfy the actual interest requirement. By providing both interest amounts, i.e. total and per diem, the lender is notifying the borrower exactly what cost to expect, whether the closing occurs on the scheduled date, the next day, and so on. The commissions believe that this preamble explanation sufficiently addresses the commenter's inquiry without a change to the text of the rule.

The amendments to §153.14 serve to clarify issues regarding modifications and the 3% fee cap in response to comments received on the rule review. First, the commissions believe that any modification of a home equity loan must still follow all constitutional home equity provisions. For example, a modification with new terms should result in substantially equal payments. Thus, the commissions add the following instructive sentences to §153.14(2): "A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction." In addition, in order to avoid any confusion, after "A modifica-

tion" in the second sentence, the clarifying phrase "of a home equity loan occurs when" replaces the phrase "is a transaction in which."

Regarding §153.14, one commenter requests the deletion of the last sentence of the introductory paragraph because it is unnecessary ("already stated in the first sentence of the [introductory] paragraph of §153.14 and §153.14(1)(A)"), contradictory ("can close *any time after* and also *on* the first anniversary date"), and confusing. The commissions agree that the last sentence of the introductory paragraph is not necessary and does not include the most accurate wording to maintain consistency with the other provisions contained in the rule. Thus, the commissions agree to delete the last sentence of the introductory paragraph from §153.14 for this adoption.

The commenter suggests that the clarifying phrase "on the same homestead property" be added to §153.14(1)(A). The commissions proposed §153.14(1)(A) with "No change." As stated under §153.13, the commissions are also unable to consider this comment regarding §153.14(1)(A) at this time. The commissions will, however, make note of this suggestion and may consider it with future rulemaking.

Also with regard to §153.14, the commissions believe that a modified home equity loan is still the same loan, same transaction, and that one 3% fee cap should apply to both the original loan and any modification. Accordingly, the commissions add new subparagraph (D) to §153.14(2) as follows: "The 3% fee cap required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction."

As suggested by a commenter during the review of Chapter 153, the amendment to §153.51 adds new paragraph (4) dealing with the Spanish translation of the consumer notice. The commissions believe that adding a reference to permissible reliance on the Spanish translation of the consumer notice, as developed under Texas Finance Code, §341.502, would be helpful to lenders.

In reference to the Spanish language translation provision in new §153.51(4), the commenter states that the phrase "developed under the requirements of Texas Finance Code, §341.502" is confusing" because that section of the Finance Code only relates to closed-end transactions. The commissions recognize the commenter's concern with regard to the disclosure only being required for closed-end transactions. Therefore, for this adoption the following clarifying phrase has been added after the word "Spanish" to the first sentence of §153.14(4): "for a closed-end loan."

The commenter states that the Spanish translation could not be found on the Finance Commission's webpage (as stated by the proposed rule), but did locate it on the webpage of the Office of Consumer Credit Commissioner (OCCC). The commenter recommends that the translation be moved to the Finance Commission's webpage or that the rule be amended to reflect the current location on the OCCC's webpage. While the commissions understand the commenter's concern, a proposed home equity rule does not go into effect unless it is adopted by the commissions and then is published in the *Texas Register*. At the time of this rule's proposal, it certainly had not been adopted and was not effective. Accordingly, upon adoption, the disclosure will be located online as stated in this adoption, i.e. the Finance Commission's webpage.

The purpose of the amendments to §153.95 is to implement technical corrections discovered during the rule review process.

In subsections (a) and (b), revisions reflect the appropriate constitutional citations related to curing a violation.

The amended interpretations are adopted pursuant to Texas Finance Code, §11.308 and §15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3) are affected by the adopted amendments.

*§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).*

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing.

(2) For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(3) For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(4) Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

*§153.12. Closing Date: Section 50(a)(6)(M)(i).*

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender.

(2) A loan application may be given orally or electronically.

*§153.13. Preclosing Disclosure: Section 50(a)(6)(M)(ii).*

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the

preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) For purposes of this section, the "preclosing disclosure" consists of a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(2) The copy of the loan application submitted to the owner in satisfaction of the preclosing disclosure requirement must be the most current version at the time the document is delivered. The lender is not obligated to provide another copy of the loan application if the only difference from the version previously provided to the owner is formatting. The lender is not obligated to give another copy of the loan application if the information contained on the more recent application is the same as that contained on the application of which the owner has a copy.

(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(4) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document a bona fide emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all actual fees, points, costs, and charges one day prior to closing.

(5) Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) At the owner's election, a good cause to modify the preclosing disclosure may be established if:

(I) the modification does not create a material adverse financial consequence to the owner; or

(II) a delay in the closing would create an adverse consequence to the owner.

(iii) The term "de minimis" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimis good cause standard may be presumed if:

(i) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than the greater of \$100 or 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a \$80,000 principal loan amount equals \$100) from the initial preclosing disclosure; and

(ii) no itemized fee, cost, point, or charge exceeds more than the greater of \$100 or 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(7) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

*§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).*

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Soldiers' and Sailors' Civil Relief Act.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The 3% fee cap required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

*§153.51. Consumer Disclosure: Section 50(g).*

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805618

Leslie L. Pettijohn

Executive Director, Finance Commission

Joint Financial Regulatory Agencies

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For further information, please call: (512) 936-7621



## **TITLE 13. CULTURAL RESOURCES**

### **PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **CHAPTER 2. GENERAL POLICIES AND PROCEDURES**

##### **SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION**

**13 TAC §§2.40, 2.42, 2.46, 2.48**

The Texas State Library and Archives Commission adopts new §§2.40, 2.42, 2.46, and 2.48 concerning alternative dispute resolution, negotiation and mediation of certain contract disputes, negotiated rulemaking, and petitions for adoption of rule changes. Adding these was part of the last Sunset Commission's review of the agency. The new sections are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6684).

No comments were received during the comment period.

The new rules are adopted under Government Code §441.020, Government Code, Chapter 2260, Government Code, Chapter 2008, and Government Code, §2001.021.

The new rules affect Government Code §441.020, Government Code, Chapter 2260, Government Code, Chapter 2008, and Government Code, §2001.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805626

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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Proposal publication date: August 22, 2008

For further information, please call: (512) 463-5459



## CHAPTER 9. TALKING BOOK PROGRAM

### SUBCHAPTER A. LIBRARY SERVICES FOR BLIND AND PHYSICALLY HANDICAPPED INDIVIDUALS

#### 13 TAC §§9.1 - 9.14

The Texas State Library and Archives Commission adopts the repeal of Chapter 9, Subchapter A, §§9.1 - 9.14, without changes to the proposal as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4950). This chapter relates to library services for blind and physically handicapped individuals. It is being repealed in order to thereafter adopt new rules for the same.

No comments were received during the comment period.

The repeals are adopted under Government Code §441.006 which provides the Texas State Library and Archives Commission with authority to govern the Texas State Library.

The repeals affect Government Code §441.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805625

Edward Seidenberg

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Proposal publication date: June 27, 2008

For further information, please call: (512) 463-5459



## CHAPTER 9. TALKING BOOK PROGRAM

#### 13 TAC §§9.1 - 9.18

The Texas State Library and Archives Commission adopts without changes new rules §§9.1 - 9.18, concerning library services for blind and physically handicapped individuals, which was published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4950).

The current rules had not been significantly revised since their adoption in 1991. The current library services for blind and physically handicapped individuals is undergoing fundamental changes as the Talking Book Program moves from analog technology to a digital one. These rules cover some of these changes, while other rules needed major revision to come into line with the changes to the library service.

No substantive comments were received during the comment period.

These sections are adopted under Government Code §441.006 which provides the Texas State Library and Archives Commission with authority to govern the Texas State Library.

The new rules affect Government Code §441.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805624

Edward Seidenberg

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## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER B. SUPERVISION OF PERSONNEL

#### 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.10, regarding the supervision of non-li-

censed employees, without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5463) and will not be republished.

The amendment allows a licensed veterinarian to use an electronic signature on rabies certificates. In addition, it allows a licensed veterinarian to delegate the use of an electronic signature pad to a non-licensed employee under the licensed veterinarian's direct supervision. The Board is seeking to address new technologies available to veterinarians in an effort to facilitate the production of rabies certificates in an efficient manner while maintaining the integrity of the certificates.

No comments were received regarding the adoption of the amendment to the rule.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805654

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: November 16, 2008

Proposal publication date: July 11, 2008

For further information, please call: (512) 305-7563



## SUBCHAPTER F. RECORDS KEEPING

### 22 TAC §573.51

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.51, regarding rabies control, without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6055) and will not be republished.

The amendment allows a licensed veterinarian to use an electronic signature on rabies certificates. In addition, it requires any licensed veterinarian who wishes to delegate the use of an electronic signature pad to a non-licensed employee to do so under the licensed veterinarian's direct supervision. The Board is seeking to address new technologies available to veterinarians in an effort to facilitate the production of rabies certificates in an efficient manner while maintaining the integrity of the certificates.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and main-

tain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805655

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: November 16, 2008

Proposal publication date: August 1, 2008

For further information, please call: (512) 305-7563



### 22 TAC §573.53

The Texas Board of Veterinary Medical Examiners adopts new §573.53, regarding the release and charges associated with patient records, without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5466) and will not be republished.

The new rule is in essence a portion of §573.52 that was moved to better organize Chapter 573. This rule still requires a veterinarian to furnish patient records, including radiographs, upon the request of the client within 15 business days. The rule specifically states the allowable charges for patient records and defines patient records. The rule still forbids the withholding of patient records for past due accounts. The rule adds a client's authorized agents/representatives or designated recipient as those allowed to receive patient records. The Board is seeking to allow pet owners to have their records released to an authorized representative if they so choose as well as better organize the rules of professional conduct for greater ease of access by the public and licensees.

One comment was received by a licensee stating that a veterinarian should be able to withhold patient records for past due accounts in order to force clients into paying their overdue bills. The Board respectfully disagrees as it finds that the well-being of the animal and its receiving proper medical treatment overrides the financial concern of the veterinarian owed payment. Other options are available to the veterinarian with a past due account for a client rather than the drastic step of withholding patient records and perhaps denying vital health information needed in the treatment of the animal by another veterinarian.

The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805656  
Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: November 16, 2008  
Proposal publication date: July 11, 2008  
For further information, please call: (512) 305-7563



## SUBCHAPTER G. OTHER PROVISIONS

### 22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.64, regarding continuing education requirements, without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5467) and will not be republished.

The amendment clarifies the rule regarding the carryover of excess hours to the next year. In addition, the rule clarifies that hardship extensions generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. This is the current policy of the Board regarding what is not considered good cause for granting an extension to the time period for earning continuing education. The Board is seeking to ensure greater clarification of the continuing education rule for the licensees of the Board to better be able to comply with the rule.

One comment was received suggesting language be added to the rule defining good cause to include family emergencies or medical problems. The Board respectfully disagrees as this is already the policy of the Board to include such scenarios as good cause on a case-by-case basis if they are received timely as required by the rule.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805657  
Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: November 16, 2008  
Proposal publication date: July 11, 2008  
For further information, please call: (512) 305-7563



### 22 TAC §573.66

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.66, regarding monitoring licensees compliance with Board rules and the Texas Veterinary Licensing Act

("the Act"), without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5468) and will not be republished.

The amendment removes the requirement of notarization of statements made by the licensee regarding the licensee's compliance with Board rules and the Act. The amendment standardizes the time allowed for response to a compliance inspection, whether on-site or by mail to 30 days. In addition, the amendment clarifies the language of the rule describing the process of opening an investigation. The Board is seeking to reduce the requirements necessary to respond to compliance inspections and standardize the time period for response to the Board.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2008.

TRD-200805658  
Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: November 16, 2008  
Proposal publication date: July 11, 2008  
For further information, please call: (512) 305-7563



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 1. PURPOSE OF RULES, GENERAL PROVISIONS

##### 30 TAC §1.10

The Texas Commission on Environmental Quality (commission or TCEQ) adopts an amendment to §1.10.

Section 1.10 is adopted *with changes* to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6726) and will be republished.

##### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking is necessary to update the Texas Commission on Environmental Quality (TCEQ) rule to reflect the number of copies required to be filed in the Office of the Chief Clerk for all documents to be considered at a commission meeting. Currently, 11 copies are required. Decreasing the number of re-



quired copies to seven or fewer, as prescribed by the Chief Clerk or General Counsel, will reduce the amount of paper necessary for commission meeting filings and significantly reduce waste.

## SECTION DISCUSSION

The commission amends §1.10(d), Document Filing Procedures, to change the number of copies required for consideration at a commission meeting from 11 to seven or fewer, as prescribed by the Chief Clerk or General Counsel. The commission also amends §1.10(g) to define the acronym "SOAH" as "State Office of Administrative Hearings."

## FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001, *et seq.*, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in §2001.0225. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rulemaking is to decrease the number of copies of documents to be considered at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The changes are not expressly to protect the environment and reduce risks to human health and the environment. Therefore, the commission concludes that the adopted rule does not constitute a major environmental rule.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rule does not exceed a federal standard because there are no federal standards regulating the number of copies for commission meetings. The adopted rule does not exceed state law requirements because there are no state laws governing this area. Also, the adopted rule does not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding commission meeting filings. And finally, though this rule is being adopted under the general powers of the agency, it is not a major environmental rule, and would not trigger the fourth applicability requirement.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and no comments were received.

## TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether this adopted rule constitutes a taking un-

der Texas Government Code, Chapter 2007. The specific purpose of the adopted rule is to update the number of copies required for consideration at a commission meeting as well as define the acronym "SOAH" as "State Office of Administrative Hearings." The adopted rule will substantially advance this stated purpose. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule would not constitute a statutory or constitutional taking because there are no burdens imposed on private real property.

## CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rule and found that it is not identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and no comments were received.

## PUBLIC COMMENT

An opportunity to provide written public comments was offered. The comment period closed on September 22, 2008. No comments were received.

## STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; and TWC, §5.105 concerning General Policy.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105.

### §1.10. Document Filing Procedures.

(a) All documents to be considered in a commission meeting or by judges in contested cases shall be filed with the chief clerk. Hearing requests and responses shall also be filed with the chief clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by United States mail, facsimile, or hand delivery. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within three days.

(d) The original or one copy of a document shall be filed, except for documents to be considered at a commission meeting. For documents to be considered at a commission meeting, seven copies or fewer, as prescribed by the Chief Clerk or General Counsel, shall be filed.

(e) The time of filing is upon receipt by the chief clerk as evidenced by the date stamp affixed to the document by the chief clerk, or as evidenced by the date stamp affixed to the document or envelope by the commission mail room, whichever is earlier.

(f) The chief clerk shall accept all documents presented for filing. The chief clerk's acceptance is not a determination that a document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the commission, or a judge in a State Office of Administrative Hearings (SOAH) proceeding, may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the commission may choose not to consider documents filed within two days of a commission meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in SOAH proceedings. The commission or general counsel may waive one or more of the requirements of this section, or impose additional filing requirements for commission meetings.

(i) This section does not apply to offers of evidence during a hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2008.

TRD-200805610  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Effective date: November 13, 2008  
Proposal publication date: August 22, 2008  
For further information, please call: (512) 239-2548



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 425. FIRE SERVICE INSTRUCTORS** **37 TAC §425.3**

The Texas Commission on Fire Protection (the Commission) adopts amendments to §425.3, concerning Minimum Standards for Fire Service Instructor I Certification, without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6558).

The purpose of these adopted amendments is to correct and change the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and more notable.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805584  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: August 15, 2008  
For further information, please call: (512) 936-3838



#### **37 TAC §425.5**

The Texas Commission on Fire Protection (the Commission) adopts amendments to §425.5, concerning Minimum Standards for Fire Service Instructor II Certification, without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6558).

The purpose of these adopted amendments is to correct and change the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and more notable.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805585  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: August 15, 2008  
For further information, please call: (512) 936-3838



#### **37 TAC §425.7**

The Texas Commission on Fire Protection (the Commission) adopts amendments to §425.7, concerning Minimum Standards for Fire Service Instructor III Certification, without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6559).

The purpose of these adopted amendments is to correct and change the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and more notable.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805586  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: August 15, 2008  
For further information, please call: (512) 936-3838



### 37 TAC §425.11

The Texas Commission on Fire Protection (the Commission) adopts amendments to §425.11, concerning International Fire Service Accreditation Congress Seal, without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6560).

The purpose of these adopted amendments is to fix the applicable date for equivalent training for granting the IFSAC seals to persons who held Instructor I, II, and III certifications prior to March 1, 2006.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805587  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: August 15, 2008  
For further information, please call: (512) 936-3838



## CHAPTER 461. GENERAL ADMINISTRATION

### 37 TAC §461.4

The Texas Commission on Fire Protection (the Commission) adopts the amendments to §461.4, concerning Definitions, without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7699).

The purpose of the rule changes is to correct the term in paragraph (5) from Insurance Service Organization to Insurance Services Office. The Commission felt there needed to be more clarification in paragraph (6) regarding what a municipal fire department is; and also added the initials NFA to paragraph (7) to be more consistent with the acronyms for other agencies that are listed in this section.

No comments were received from the public regarding the adopted amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805579  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: September 12, 2008  
For further information, please call: (512) 936-3838



## CHAPTER 463. APPLICATION CRITERIA

### 37 TAC §463.2

The Texas Commission on Fire Protection (the Commission) adopts amendments to §463.2, concerning Limitations on Loans, Scholarships and Grants, without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7700).

The Commission felt a clearer definition of the purpose of the Grant and Loan Program needed to be stated in this section.

No comments were received from the public regarding the adopted amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805580

Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: September 12, 2008  
For further information, please call: (512) 936-3838



### 37 TAC §463.3

The Texas Commission on Fire Protection (the Commission) adopts amendments to §463.3, concerning Application Form, without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7700).

The purpose of the changes in this section is to provide more clarification regarding the type of fire departments applying for the loan, and also the Commission wants to ensure that fire departments' involved in fire suppression is not concerned with emergency medical responses as the equipment covered in this section pertains to fire suppression activities.

No comments were received from the public regarding the adopted amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805581  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: September 12, 2008  
For further information, please call: (512) 936-3838



### 37 TAC §463.4

The Texas Commission on Fire Protection (the Commission) adopts amendments to §463.4, concerning Competitive Needs Criteria, without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7701).

The purpose of these adopted amendments is to ensure that applicants understand the competitive need criteria of reporting incidents to the TEFIRS system is a mandatory requirement for eligibility and the applicants' adoption of the National Incident Management System (NIMs) is also a separate additional requirement.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805582  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: September 12, 2008  
For further information, please call: (512) 936-3838



## CHAPTER 465. EQUIPMENT, FACILITIES, AND TRAINING STANDARDS

### 37 TAC §465.1

The Texas Commission on Fire Protection (the Commission) adopts amendments to §465.1, concerning Equipment Standards, without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7701).

The purpose of this rule change is to correct the name of the Insurance Services Offices and eliminate a transportation equipment exception to the rule which will ensure all transportation equipment purchased will comply with the applicable National Fire Protection Association Standard.

No comments were received from the public regarding these adopted amendments.

These amendments are adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2008.

TRD-200805583  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Effective date: November 11, 2008  
Proposal publication date: September 12, 2008  
For further information, please call: (512) 936-3838



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Alcoholic Beverage Commission

### Title 16, Part 3

In accordance with §2001.039, Government Code, the Texas Alcoholic Beverage Commission (TABC) is serving notice of its intent to review rules under Title 16, Chapter 31 of the Texas Administrative Code, relating to Administration.

The TABC invites comments from the public during the review process regarding whether the need for the chapter still exists. Amendments to or repeal of the existing Chapter proposed by TABC will appear in the Proposed Rules section of the *Texas Register* for a 30 day comment period.

Any questions or comments should be directed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or [joan.bates@tabc.state.tx.us](mailto:joan.bates@tabc.state.tx.us).

TRD-200805614

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Filed: October 24, 2008



In accordance with §2001.039, Government Code, the Texas Alcoholic Beverage Commission (TABC) is serving notice of its intent to review rules under Title 16, Chapter 43 of the Texas Administrative Code, relating to Accounting.

The TABC invites comments from the public during the review process regarding whether the need for the chapter still exists. Amendments to or repeal of the existing Chapter proposed by TABC will appear in the Proposed Rules section of the *Texas Register* for a 30 day comment period.

Any questions or comments should be directed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or [joan.bates@tabc.state.tx.us](mailto:joan.bates@tabc.state.tx.us).

TRD-200805615

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Filed: October 24, 2008



State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 230, Professional Educator Preparation and Certification, Subchapter A, Assessment of Educators; Subchapter E, Centers for Professional Development of Teachers; Subchapter G, Certification Requirement for Classroom Teachers; Subchapter J, Certification Requirements for Educators Other than Classroom Teachers and Educational Aides; Subchapter M, Certification of Educators in General; Subchapter N, Certificate Issuance Procedures; Subchapter O, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States; Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs; Subchapter Q, Permits; Subchapter S, Educational Aide Certificate; Subchapter U, Assignment of Public School Personnel; Subchapter V, Continuing Education; and Subchapter Y, Definitions, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 230 continue to exist. The comment period begins November 7, 2008, and ends following receipt of public comments on the rule review of 19 TAC Chapter 230 at the SBEC meeting to be held on February 6, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

The SBEC has taken action to adopt, subject to State Board of Education review, the repeal of 19 TAC Chapter 230, Subchapter G, §230.191. The proposed repeal of 19 TAC §230.191 is necessary since the program preparation requirements in this rule have been incorporated into the proposed revisions to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, or have an expiration date in rule of September 1, 2007. The proposed repeal of 19 TAC §230.191 was published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6702).

TRD-200805721

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: October 29, 2008



## Texas State Library and Archives Commission

### Title 13, Part 1

The Texas State Library and Archives Commission files this notice of intention to review Chapter 3, concerning the State Publications Depository Program, in accordance with Government Code, §2001.039, which require state agencies to review and consider for readoption each of their rules every four years.

The rules were adopted pursuant to the Government Code, §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) to §441.104(9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of a state publications depository program.

Comments on the commission's review of its rules in Chapter 3 may be directed to Beverley Shirley, Director, Library Resource Sharing Division, Box 12927, Austin, Texas 78711-2927. For further information or questions concerning this proposal, please contact Ms. Shirley at (512) 463-5433 or at bshirley@tsl.state.tx.us.

TRD-200805629

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Filed: October 27, 2008



The Texas State Library and Archives Commission proposes to review Chapter 6, concerning the management, retention, microfilming, and electronic storage of state agency records and the fee schedules for the commission's imaging and records storage services, in accordance with the requirements of the Government Code, §2001.039, which require state agencies to review and consider for readoption each of their rules every four years.

The rules were adopted pursuant to the Government Code, §441.185(e) that requires the Texas State Library and Archives Commission to adopt rules concerning the submission of records schedules to the state records administrator; Government Code, §441.185(f) that permits the commission to prescribe minimum retention periods for state records; Government Code, §441.188 that permits the commission to establish standards and procedures for the microfilming of state records; Government Code, §441.189 that permits the commission to establish standards and procedures for the electronic storage of state records; and the Business and Commerce Code, §43.017 that permits the commission to adopt rules concerning the management of electronic transactions and signed records. The commission has authority to recover the costs of its imaging and records storage services through the assessment of fees. The commission has chosen to adopt its fee schedules for these services as administrative rules under authority of the Government Code, §441.199, which gives the commission broad rulemaking authority in the management and preservation of state's records.

Written comments on the review of Chapter 6 may be submitted to Tim Nolan, State and Local Records Management, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711. Comments may also be submitted electronically to tim.nolan@tsl.state.tx.us or faxed to (512) 421-7201.

TRD-200805628

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Filed: October 27, 2008



## Texas Workforce Commission

### Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 811, Choices, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-200805674

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: October 28, 2008



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 841, Workforce Investment Act, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-200805677

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: October 28, 2008



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 847, Project Rio Employment Activities and Support Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-200805678

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery  
Texas Workforce Commission

Filed: October 28, 2008



The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-200805679

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery  
Texas Workforce Commission

Filed: October 28, 2008

## ◆ ◆ ◆ Adopted Rule Review

Texas Facilities Commission

### Title 1, Part 5

Pursuant to the notice of the proposed rule review published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7312), the Texas Facilities Commission (Commission) has reviewed and considered for readoption, revision, or repeal 1 TAC Part 5, Chapter 126, Surplus and Salvage Property Programs, in accordance with the Texas Government Code §2001.039 (Vernon 2008). The Commission has considered, among other things, whether the agency rulemaking authority and business necessity associated with the adoption of these rules continue to exist.

During its review, the Commission determined that the agency rulemaking authority remains in effect and the business necessity for these rules also continues to exist. The Commission intends to readopt with amendments 1 TAC Part 5, §§126.1 - 126.4 as these rules were promulgated to direct the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property either by the State agency that owns the subject property or by the Commission, on behalf of the State of Texas under Tex Government Code, Chapter 2175. Revisions to these rules, however, are required to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. In addition, the Commission proposes to repeal 1 TAC Part 5, §§126.5, 126.6, 126.20, and 126.21 as the text provided the public no additional guidance or direction than that reflected in the governing statutes. The Commission readopts Texas Administrative Code, Title 1, Part 5, §§126.1 - 126.4 with amendments and repeals §§126.5, 126.6, 126.20, and 126.21. The proposed amendments and repeal are published in this issue of the *Texas Register*.

These rules are readopted under the statutory authority granted to the Commission in Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

No comments were received on the proposed rule review.

This completes the Commission's review of 1 TAC Part 5, Chapter 126, Surplus and Salvage Property Programs.

TRD-200805616

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 24, 2008



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.



Figure: 16 TAC §33.23(a)

<b>Liquor Permits</b>	
Agent's Permit	\$40.00
Airline Beverage Permit	\$139.00
Beverage Cartage Permit	\$64.00
Bonded Warehouse Permit	\$58.00
Bonded Warehouse Permit (Dry Area)	\$58.00
Brewer's Permit	\$245.00
Brewpub License	\$181.00
Carrier's Permit	\$107.00
Caterer's Permit	\$118.00
Daily Temporary Mixed Beverage Permit (Per Day)	\$171.00
Daily Temporary Private Club Registration Permit	\$192.00
Direct Shipper's Permit	\$160.00
Distiller's & Rectifier's Permit	\$149.00
Food and Beverage Certificate	\$245.00
Forwarding Center Authority	\$118.00
Industrial Permit	\$111.00
Local Cartage Permit	\$86.00
Local Distributor's Permit	\$192.00
Local Industrial Alcohol Manufacturer's Permit	\$139.00
Manufacturer's Agent's Permit	\$40.00
Manufacturer's Agent's Warehousing Permit	\$277.00
Market Research Packager's Permit	\$54.00
Minibar Permit	\$149.00
Mixed Beverage Permit	\$256.00
Mixed Beverage Late Hours Permit	\$139.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate	\$256.00
Non Resident Brewer's Permit	\$160.00
Non Resident Seller's Permit	\$160.00
<del>[Out-of State Wine Only Package Store]</del>	<del>[\$235.00]</del>
Package Store Permit	\$213.00
Package Store Tasting Permit	\$75.00
Promotional Permit	\$160.00
Wine Only Package Store Permit	\$235.00
Passenger Train Beverage Permit	\$256.00
Private Carrier's Permit	\$107.00
Private Club Registration Permit	\$383.00
Private Club Beer and Wine Permit	\$383.00
Private Club Late Hours Permit	\$149.00
Private Storage Permit	\$86.00
Temporary Charitable Auction Permit	\$171.00

Public Storage Permit	\$86.00
Wholesaler's Permit	\$298.00
General Class B Wholesaler's Permit	\$277.00
Local Class B Wholesaler's Permit	\$277.00
Wine and Beer Retailer's Permit Railway Car	\$235.00
Wine and Beer Retailer's Permit Excursion Boat	\$235.00
Wine Bottler's Permit	\$256.00
Winery Permit	\$298.00
Winery Storage Permit	\$86.00
<b>Beer Licenses</b>	
Agent's Beer License	\$40.00
Branch Distributor's License	\$298.00
General Distributor's License	\$298.00
Importer's License	\$118.00
Importer's Carrier's License	\$86.00
Local Distributor's License	\$298.00
Manufacturer's License	\$277.00
Manufacturer's Warehouse License	\$235.00
Non Resident Manufacturer's License	\$245.00
Beer Retailer's Off Premise License	\$235.00
Beer Retailer's On Premise License	\$235.00
Retail Dealer's On Premise Late Hours License	\$139.00
Storage License	\$86.00
Temporary License	\$171.00
Temporary License Special 3 Day Wine and Beer	\$171.00
Temporary License Special 4 Day Wine and Beer	\$171.00
Wine and Beer Retailer's Permit	\$235.00
Wine and Beer Retailer's Off Premise Permit	\$235.00

Figure: 16 TAC §33.25(d)

<b>Permit/License Type [agency code]</b>	<b>Texas Alcoholic Beverage Code Chapter</b>
Airline Beverage Permit [AB]	Chapter 34
Beverage Cartage Permit [PE]	Chapter 44
Bonded Warehouse Permit [J]	Chapter 46
Bonded Warehouse Permit (Dry Area) [JD]	Chapter 46
Brewpub License [BP]	Chapter 74
Carrier's Permit [C]	Chapter 41
Caterer's Permit [CB]	Chapter 31
Direct Shipper's Permit [DS]	Chapter 54
Distiller's & Rectifier's Permit [D]	Chapter 14
Food and Beverage Certificate [FB]	Chapter 25
[Forwarding Center Authority [FC]]	[Rule §35.6]
Industrial Permit [I]	Chapter 38
Local Industrial Alcohol Manufacturer's Permit [LI]	Chapter 47
Market Research Packager's Permit [MR]	Chapter 49
Minibar Permit [MI]	Chapter 51
Mixed Beverage Permit [MB]	Chapter 28
Mixed Beverage Restaurant Permit [RM] with FB	Chapter 28
Mixed Beverage Late Hours [LB]	Chapter 29
Passenger Train Beverage Permit [PT]	Chapter 48
Private Carrier's Permit [O]	Chapter 42
Private Club Exemption Certificate Permit [NE]	Chapter 32
Private Club Registration Permit [N]	Chapter 32
Private Club Beer and Wine Permit [NB]	Chapter 32
Private Club Late Hours Permit [NL]	Chapter 33
Promotional Permit [PR]	Chapter 54
Wine Bottler's Permit [Z]	Chapter 18
Winery Permit [G]	Chapter 16
Winery Storage Permit [GS]	Chapter 45

Figure: 16 TAC §33.25(e)

<b>Permit/License Type [agency code]</b>	<b>Texas Alcoholic Beverage Code Chapter</b>
Agent's Manufacturing Warehousing Permit [AW]	Chapter 55
Brewer's Permit [B]	Chapter 12
Forwarding Center Authority [FC]	Rule §35.6
Local Cartage Permit [E]	Chapter 43
Local Cartage Transfer Permit [ET]	Chapter 43
Local Distributor's Permit [LP]	Chapter 23
Private Storage Permit [L]	Chapter 45
Public Storage Permit [K]	Chapter 45
Package Store Permit [P]	Chapter 22
Wine Only Package Store Permit [Q]	Chapter 24
<del>[Out of State Wine Only Package Store Permit [QO]]</del>	<del>[Chapter 24]</del>
Package Store Tasting Permit [PS]	Chapter 52
Non-Resident Seller's Permit [S]	Chapter 37
Non-Resident Brewer's Permit [U]	Chapter 13
Storage License [SL]	Chapter 75
Wholesaler's Permit [W]	Chapter 19
General Class B Wholesaler's Permit [X]	Chapter 20
Local Class B Wholesaler's Permit [LX]	Chapter 21
Branch Distributor's License [BC]	Chapter 66
General Distributor's License [BB]	Chapter 64
Importer's License [BI]	Chapter 67
Importer's Carrier's License [BJ]	Chapter 68
Local Distributor's License [BD]	Chapter 65
Manufacturer's License [BA]	Chapter 62
Manufacturer's Warehouse License [MW]	Chapter 62
Non Resident Manufacturer's License [BS]	Chapter 63
Beer Retailer's Off Premise License [BF]	Chapter 71
Beer Retailer's On Premise License [BE] Counties under 1.4 million population	Chapter 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Original	Chapter 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Renewal	Chapter 69
Retail Dealer's On Premise Late Hours License [BL]	Chapter 70
Wine and Beer Retailer's On Premise License [BG] Counties under 1.4 million population	Chapter 25
Wine and Beer Retailer's On Premise License [BG] Counties over 1.4 million population	Chapter 25
Wine and Beer Retailer's Off Premise License [BQ]	Chapter 26
Wine and Beer Retailer's Permit Railway Car [Y]	Chapter 25
Wine and Beer Retailer's Permit Excursion Boat [V]	Chapter 25
Food and Beverage Certificate [FB]	Chapter 25

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/03/08 - 11/09/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/03/08 - 11/09/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200805675

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 28, 2008



## Texas Education Agency

### Request for Early Reading Diagnostic Instruments

Description. The Texas Education Agency (TEA) is notifying publishers that early reading diagnostic instruments for Kindergarten, Grade 1, and Grade 2 may be submitted for review. Texas Education Code (TEC), §28.006, authorizes the commissioner of education to develop recommendations for school districts to administer early reading instruments to diagnose student reading skill and comprehension development.

In accordance with the TEC, §28.006(b), the commissioner of education shall adopt a list of early reading instruments that school districts may use to diagnose reading skill and comprehension development. Reading instruments placed on the list must be based on scientific research, evaluate individual student reading progress, and be used to identify students at risk for dyslexia or other reading difficulties. The list of reading instruments adopted under the TEC, §28.006(b), must also provide for diagnosing the reading development and comprehension of students participating in a program under the TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

Program Requirements. Since the 1998 - 1999 school year, school districts have been required to administer early reading instruments. Results from the early reading instruments are used to inform instruction and place students at risk for reading difficulties, including dyslexia, in Accelerated Reading Instruction intervention programs. Results from these early reading instruments must be reported to the commissioner of education, the local school board, and the parent and/or guardian of students tested. The list of early reading instruments will be made available so that school districts and open-enrollment charter schools may order instruments for the 2009 - 2010 school year. Instruments selected for the commissioner's list will remain on the list for four years unless the approved test is no longer available from the publisher or the

publisher submits an updated version of the instrument prior to the end of the four-year approval cycle.

Early reading instruments approved in earlier years do not need to be resubmitted this year, but must be resubmitted when the four-year cycle has expired.

Due to continued budgetary limitations, a \$5 per student per year cost cap will still remain on each complete Test Option on the 2009 - 2010 *Commissioner's List of Early Reading Instruments*. For example, if Option G requires two instruments to assess all required domains at a grade level, then the combination of those two instruments will be state funded at no more than \$5 per student. For the 2009 - 2010 school year, school districts and open-enrollment charter schools will purchase early reading instruments directly from the publisher/vendor unless the test is published by the TEA. If the cost of the Test Option exceeds the \$5 per student limit established, the state will reimburse the school district or open-enrollment charter school at the limit established. The school district or open-enrollment charter school is responsible for the remainder of the cost of the Test Option.

Selection Criteria. Publishers will be responsible for submitting tests they wish to have considered for inclusion on the 2009 - 2010 *Commissioner's List of Early Reading Instruments*. All tests submitted for review must be based on scientific research and must be submitted with evidence of reliability and validity for assessing key reading domains and identifying children at risk of reading failure, including the identification of children with dyslexia. Submitted evidence must demonstrate that the test meets the state criteria for reliability and validity. Instruments will be evaluated in terms of validity, reliability, and ease of administration/implementation by the classroom teacher. Consideration will also be given to the number of domains covered by the test and the number of additional tests that would need to be purchased by schools in order to cover all required domains. Reading instruments (English and Spanish) submitted for review must address at least one of the following five domains: (1) phonological awareness; (2) grapho-phonemic knowledge; (3) word reading; (4) oral reading accuracy; and (5) comprehension of text, as appropriate for Kindergarten, Grade 1, and Grade 2. Tests submitted for use by Reading First schools may also assess vocabulary and fluency. As in previous years, it may be necessary to use a combination of instruments to form a Test Option to assess all required domains. The criteria used to select instruments for the 2009 - 2010 school year is available through the TEA Division of Curriculum, (512) 463-9581.

Proposals must be submitted to Dr. David Francis; Texas Institute for Measurement, Evaluation, and Statistics; 100 TLCC Annex; Houston, Texas 77204-6022 by 5:00 p.m. (Central Time), Thursday, December 18, 2008, to be considered for inclusion on the 2009 - 2010 *Commissioner's List of Early Reading Instruments*.

TRD-200805698

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: October 29, 2008



## Request for Grade 3 Early Reading Diagnostic Instruments

**Description.** The Texas Education Agency (TEA) is notifying publishers that early reading diagnostic instruments for the 2009-2010 *List of Grade 3 Early Reading Instruments* may be submitted for review. P.L. 107-110, Title I, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, CFDA #84.357, authorizes the commissioner of education to develop recommendations for school districts to administer early reading instruments to diagnose student reading skill and comprehension development.

Under P.L. 107-110, Title I, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, CFDA #84.357, the TEA shall adopt a list of Grade 3 early reading instruments that school districts and open-enrollment charter schools may use to diagnose reading skill and comprehension development. Reading instruments placed on the list must be based on scientific research, evaluate individual student reading progress, and be used to identify students at risk for dyslexia or other reading difficulties. The list of reading instruments must also provide for diagnosing the reading development and comprehension of students participating in a program under the Texas Education Code, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

**Program Requirements.** Since May 2003, school districts and open-enrollment charter schools participating in Reading First have been required to administer Grade 3 early reading instruments. Results from the early reading instruments are used to inform instruction and place students at risk for reading difficulties, including dyslexia, in Accelerated Reading Instruction intervention programs. The list of early reading instruments will be made available so that school districts and open-enrollment charter schools may order instruments for the 2009-2010 school year. Instruments selected for the 2009-2010 *List of Grade 3 Early Reading Instruments* will remain on the list for four years unless the publisher submits an updated version of the instrument prior to the end of the four-year approval cycle. Grade 3 early reading instruments approved in earlier years do not need to be resubmitted this year, but must be resubmitted when the four-year cycle has expired.

**Selection Criteria.** Publishers will be responsible for submitting tests they wish to have considered for inclusion on the 2009-2010 *List of Grade 3 Early Reading Instruments*. All tests submitted for review must be based on scientific research and must meet the state criteria for reliability and validity.

Instruments will be evaluated in terms of validity, reliability, and ease of administration/implementation by the classroom teacher. Reading instruments (English and Spanish) submitted for review must address at least one of the following four domains: (1) phonological awareness; (2) graphophonemic knowledge; (3) word reading; and (4) oral reading accuracy and comprehension of text, as appropriate for Grade 3.

Proposals must be submitted to Dr. David Francis; Texas Institute for Measurement, Evaluation, and Statistics; 100 TLCC Annex; Houston, Texas 77204-6022 by 5:00 p.m. (Central Time), Thursday, December 18, 2008, to be considered for inclusion on the 2009-2010 *List of Grade 3 Early Reading Instruments*.

TRD-200805699

Cristina De La Fuente-Valadez

Director, Policy Coordinator

Texas Education Agency

Filed: October 29, 2008

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

## Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 8, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 8, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 50's Classic Car Wash of Lubbock, Inc. dba 50's Classic Car Wash; DOCKET NUMBER: 2008-1573-PST-E; IDENTIFIER: RN102377553; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.8(c)(4)(A)(vii) and (5)(A)(i), by failing to submit initial/renewal underground storage tank (UST) registration and self-certification form and by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Ant Enterprises Incorporated; DOCKET NUMBER: 2008-1216-AIR-E; IDENTIFIER: RN102861655; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.615(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to limit operations of a temporary concrete plant to a single project; PENALTY: \$750; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Building Materials Corporation of America; DOCKET NUMBER: 2008-0805-AIR-E; IDENTIFIER: RN100788959; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: asphalt felts and coatings manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 7711A, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to comply with the permitted Maximum Allowable Emissions Table for the line three cooling section and the thermal oxidizer stack; and 30 TAC §116.115(b)(2)(F), Air Permit Number 7711A, SC Number 9, and THSC, §382.085(b), by failing to conduct stack testing; PENALTY:

\$50,925; Supplemental Environmental Project (SEP) offset amount of \$20,370 applied to Texas Parent Teacher Conference - Clean School Bus Program; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Cimarex Energy Company; DOCKET NUMBER: 2008-1267-AIR-E; IDENTIFIER: RN105522247; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: oil and gas production site; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions for a permit by rule before construction and operation of the site; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Citgo Products Pipeline Company; DOCKET NUMBER: 2008-0963-AIR-E; IDENTIFIER: RN100225739; LOCATION: Eules, Tarrant County; TYPE OF FACILITY: gasoline pipeline operation; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit (FOP) Number O-2891, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: \$2,675; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Kevin Dunham; DOCKET NUMBER: 2008-1577-WOC-E; IDENTIFIER: RN105599054; LOCATION: Sidney, Comanche County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Flat Rock Minerals, LLC; DOCKET NUMBER: 2008-1579-WQ-E; IDENTIFIER: RN105497176; LOCATION: Upshur County; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Jeff Hamm; DOCKET NUMBER: 2008-1139-LII-E; IDENTIFIER: RN105532261; LOCATION: Granbury, Hood County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(b), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold a landscape irrigator license; and 30 TAC §344.58(b) and Texas Occupations Code, §1903.251, by failing to comply with irrigator installer requirements; PENALTY: \$986; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Kendrick Oil Company dba Fast Stop 14; DOCKET NUMBER: 2008-1530-PST-E; IDENTIFIER: RN104346861; LOCATION: Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: LAMBERTI USA, INCORPORATED; DOCKET NUMBER: 2008-0839-IWD-E; IDENTIFIER: RN101206803; LOCATION: Hungerford, Wharton County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002469000, Effluent Lim-

itations and Monitoring Requirements Number 1, Outfall 001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids, oil and grease, fecal coliform, and carbonaceous biochemical oxygen demand; 30 TAC §305.125(17) and TPDES Permit Number WQ0002469000, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results; 30 TAC §319.11(b), by failing to provide a National Institute of Standards and Technology certified traceable thermometer; 30 TAC §305.125(1) and TPDES Permit Number WQ0002469000, Monitoring and Reporting Requirements Number 1, by failing to accurately report the number of effluent excursions and the frequency of analysis on the monthly discharge monitoring reports; 30 TAC §305.125(5) and TPDES Permit Number WQ0002469000, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the permit conditions; and 30 TAC §317.4(a)(8), by failing to provide a backflow prevention device or air gap on the potable water line; PENALTY: \$80,507; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Matrix Metals LLC; DOCKET NUMBER: 2008-0995-AIR-E; IDENTIFIER: RN100218205; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: steel foundry; RULE VIOLATED: 30 TAC §116.770(a) and THSC, §382.085(b), by failing to obtain authorization to operate arc furnace numbers 1 and 2 or shut these furnaces down; PENALTY: \$9,675; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2008-1053-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3855B/PSD-TX-876, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,450; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Paradise Manufacturing Company, Inc.; DOCKET NUMBER: 2008-1535-WQ-E; IDENTIFIER: RN103794475; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: manufacturer; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: RAJWANI & ALI'S CORPORATION dba K & W Corner Store; DOCKET NUMBER: 2008-0950-PST-E; IDENTIFIER: RN101561652; LOCATION: McKinney, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery systems; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Rimrock Development LLC; DOCKET NUMBER: 2008-1580-WQ-E; IDENTIFIER: RN105610869; LOCATION: Tom Green County; TYPE OF FACILITY: subdivision developer; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(16) COMPANY: Ross Construction, Inc.; DOCKET NUMBER: 2008-1290-WQ-E; IDENTIFIER: RN105520431; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediment; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(17) COMPANY: Sabina Petrochemicals LLC; DOCKET NUMBER: 2008-1021-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemicals manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-02629, GTC and SC Number 8, Air New Source Review Permit Number 41945, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,150; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Billy A. Stafford; DOCKET NUMBER: 2008-1576-WOC-E; IDENTIFIER: RN103483087; LOCATION: Waco, McLennan County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Standley Feed & Seed, Inc.; DOCKET NUMBER: 2008-1091-WQ-E; IDENTIFIER: RN100831502; LOCATION: Madisonville, Madison County; TYPE OF FACILITY: bulk fertilizer storage and grain mill; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to waters of the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Mark Oliver, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Terry County dba Terry County Airport; DOCKET NUMBER: 2008-1531-PST-E; IDENTIFIER: RN101858579; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: airport with refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(21) COMPANY: Charles L. Warren; DOCKET NUMBER: 2008-1594-WOC-E; IDENTIFIER: RN105505374; LOCATION: McMullen County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: WEHBE INVESTMENTS, INC. dba Cedar Park Food Store; DOCKET NUMBER: 2008-0765-PST-E; IDENTIFIER: RN101495539; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume

measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §115.221 and THSC, §382.085(b), by failing to ensure that displaced vapors from a gasoline storage container located at a motor vehicle fuel dispensing facility were captured during transfer of gasoline from a tank-truck into the storage container; PENALTY: \$5,400; SEP offset amount of \$2,160 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

TRD-200805680

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 28, 2008

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### Notice of Availability of the Draft October 2008 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2008 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the draft October 2008 WQMP update may be found on the commission's Web site located at [http://www.tceq.state.tx.us/nav/eq/eq\\_wqmp.html](http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 8, 2008. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [nvignali@tceq.state.tx.us](mailto:nvignali@tceq.state.tx.us).

TRD-200805667

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 28, 2008

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## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-1080-AIR-E; TCEQ ID NUMBER: RN103919817; LOCATION: 9500 Interstate 10 East, Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), Air Permit Number 1504A, Special Condition Number 1 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$16,950; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: The DOW Chemical Company; DOCKET NUMBER: 2007-1981-AIR-E; TCEQ ID NUMBER: RN100225945; LOCATION: 2301 North Brazosport Boulevard, Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 20432 and PSD-TX-994, Special Condition III-1, THSC, §382.085(b), by failing to prevent unauthorized emissions, 30 TAC §116.115(c), New Source Review (NSR) Permit Number 834, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions, and 30 TAC §116.115(c), NSR Permit Number 6932, Special Condition 1, THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$30,000; Supplemental Environmental Project offset amount of \$15,000 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Jim Sallans; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77025-1425, (713) 767-3500.

(3) COMPANY: Friend Enterprises Inc. dba Friendly Mart; DOCKET NUMBER: 2003-1045-PST-E; TCEQ ID NUMBER: RN100825090; LOCATION: 7200 Manchaca, Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring; 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation for a Underground Storage Tank (UST) system at a retail facility; and 30 TAC §334.50(b)(2)(A)(i)(III) and (ii) and TWC, §26.3475(a), by failing to test or monitor the piping in the UST system for releases. PENALTY: \$15,300; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Houston International Terminal, Inc.; DOCKET NUMBER: 2006-1858-IHW-E; TCEQ ID NUMBER: RN100679075; LOCATION: 18001 East Freeway, Channelview, Harris County; TYPE OF FACILITY: barge cleaning and oil storage facility; RULES VIOLATED: 30 TAC §335.112(a)(9) and 40 Code of Federal Regulations (CFR) §265.197, by failing to conduct adequate tank closure; 30 TAC §335.2(b), by failing to dispose of industrial hazardous waste at an authorized facility; and 30 TAC §335.62 and 40 CFR §262.11 by failing to perform hazardous waste determinations; PENALTY: \$689,750; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: INEOS Americas LLC; DOCKET NUMBER: 2007-0820-IHW-E; TCEQ ID NUMBER: RN104791421; LOCATION: 2001 Gulfway Drive, Building 1746, Port Arthur, Jefferson County; TYPE OF FACILITY: Cumene production; RULES VIOLATED: 30 TAC §335.62, 40 CFR §262.11, by failing to complete hazardous waste determinations, 30 TAC §335.9(a)(1) by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; 30 TAC §335.10(c) and 40 CFR §262.20(a)(1), by failing to properly complete hazardous waste manifests; 30 TAC §335.112(a)(3) and 40 CFR §265.52(e), by failing to maintain an adequate contingency plan; and 30 TAC §335.69(a)(4) and 40 CFR §262.34(a)(4) and §265.16(d)(4), by failing to maintain accurate records of Resource Conservation and Recovery Act training of facility personnel; PENALTY: \$6,880; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1930, (409) 898-3838.

(6) COMPANY: Jack R. Wade dba J & S Grocery; DOCKET NUMBER: 2006-1860-PST-E; TCEQ ID NUMBER: RN101908846; LOCATION: 628 North Market Street, Grapeland, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,745; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of Lawn; DOCKET NUMBER: 2007-1224-MLM-E; TCEQ ID NUMBER: RN101406916; LOCATION: 150 Main Street, Lawn, Taylor County; TYPE OF FACILITY: public water supply system and surface water treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §290.42(i), TCEQ Agreed Order, Docket Number 2003-0324-PWS-E, Ordering Provision Number 2.a., by failing to obtain a permit from the commission prior to discharging wastewater; 30 TAC §290.111(c)(2) and (4), THSC, §341.0315(c), by failing to properly monitor and record the turbidity level of the combined filter effluent of the public water system with a surface water source; 30 TAC §290.111(b)(1)(A) and THSC, §341.0315(c), by exceeding the turbidity level of combined filter effluent of the public water system that treats surface water; 30 TAC §290.110(b)(1) and (f)(4) and THSC, §341.0315(c), by failing to meet the requirements of the disinfection protocol used by the public water system for a period longer than four consecutive hours; 30 TAC §290.111(f)(6), by failing to comply with the requirements of a Corrective Action Plan that was a result of a Mandatory Comprehensive Performance Evaluation conducted on February 20 - 24, 2006; 30 TAC §290.46(s)(1), and TCEQ Agreed Order, Docket Number 2004-2098-PWS-E, Ordering Provision Number 2.a.i., by failing to calibrate flow measuring devices and rate-of-flow controllers at least once every 12 months; 30 TAC §290.45(b)(2)(B), THSC, §341.0315(c), and TCEQ Agreed Order, Docket Number 2003-0324-PWS-E, Ordering Provision Number 2.b.i., by failing to provide a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design flow; 30 TAC §290.42(f)(1)(E)(ii) and TCEQ Agreed Order, Docket Number 2003-0324-PWS-E, Ordering Provision Number 2.b.iv., by failing to provide spill containment facilities for all liquid chemical storage tanks; 30 TAC §290.46(d)(2)(B) and TCEQ Agreed Order, Docket Number 2006-0164-PWS-E, Ordering Provision Number 2.b.ii, by failing to maintain the residual disinfectant concentration throughout the distribution system at a minimum of 0.5 milligrams per liter total chlorine; 30 TAC §290.44(d) and TCEQ Agreed Order, Docket Number 2003-0324-PWS-E, Ordering Provision Number 2.b.ii, by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system at all times; 30 TAC §290.46(e)(5)(F), by failing to provide alarms to summon operations during periods when the surface water treatment plant is not staffed; 30 TAC §290.41(e)(2)(C), by failing to provide legible signs at the raw water intake location which state that the area is restricted and that all recreational activities and trespassing are prohibited; 30 TAC §290.46(t), by failing to post at the Hudson pump station a legible sign containing the name of the water supply and emergency telephone numbers where a responsible official could be contacted; 30 TAC §290.43(c)(8) and TCEQ Agreed Order, Docket Number 2003-0324-PWS-E, Ordering Provision Number 2.b.vi, by failing to maintain the Chatham ground storage tank in accordance with the American Water Works Association standards; 30 TAC §290.42(f)(2)(G), by failing to design the coagulant feed and metering system that applies chemicals to the water leaving the treatment system in such a manner that complete disinfection occurs to the water prior to it entering the distribution system; 30 TAC §290.46(s)(2)(B)(ii), by failing to conduct a calibration check of the benchtop turbidimeter using secondary standards each time a series of samples is tested; 30 TAC §290.46(s)(2)(B)(iv), by failing to conduct weekly calibration checks of the on-line turbidimeter; 30 TAC §290.43(c)(1), by failing to provide the system's storage tanks with gooseneck vents or roof ventilators equipped with approved screens to prevent the entry of animals, birds, insects, and heavy air contaminants; 30 TAC §290.46(m), by failing to initiate maintenance housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least

once every 30 days using chlorine solutions of known concentrations; PENALTY: \$49,556; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard., Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200805682

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 28, 2008



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bluff Springs Food Mart, Inc. dba Bluff Springs Food Mart Number 2; DOCKET NUMBER: 2006-0925-PST-E; TCEQ ID NUMBER: RN101490936; LOCATION: 10810 North Lamar, Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum Underground Storage Tank (UST); 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability and failing to reconcile inventory

control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum 1% of flow through plus 130 gallons; PENALTY: \$4,500; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Frederico Garcia dba My Dream Ballroom; DOCKET NUMBER: 2007-1912-PWS-E; TCEQ ID NUMBER: RN101215168; LOCATION: 4503 Mount Houston Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data before placing well Number 1 into service; and 30 TAC §290.42(e)(5), by failing to provide a housed and locked enclosure for the hypochlorinator solution container and pumps to protect them from adverse weather conditions and vandalism; PENALTY: \$157; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Jeff Rowland; DOCKET NUMBER: 2008-0434-WR-E; TCEQ ID NUMBER: RN101582484; LOCATION: 1.8 miles north of Point, on McBride Branch a tributary of Lake Fork Creek, Rains County; TYPE OF FACILITY: earthen dam and reservoir; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain appropriate authorization prior to storing or diverting state water associated with his increasing the height of the drop inlet on the impoundment; PENALTY: \$1,050; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Mohammad A. Swati dba Sheldon King Savers Food; DOCKET NUMBER: 2005-0602-PST-E; TCEQ ID NUMBER: RN100861137; LOCATION: 11730 Green River Drive, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and TCEQ Default Order Docket Number 1998-0427-MWD-E, effective May 19, 1999, by failing to pay \$14,525 of the administrative penalty assessed by a commission order; PENALTY: \$11,770; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200805683

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 28, 2008



Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Transfer Station Registration Application No. 40235

#### APPLICATION

The City of Denton has applied to the Texas Commission on Environmental Quality (TCEQ) for a proposed Registration (No. 40235), to construct and operate a Type V municipal solid waste transfer station. The proposed facility, the City of Denton Transfer Station, will be located at 1527 S. Mayhill Road in Denton County. This facility is re-

questing authorization to transfer municipal solid waste which includes household waste and construction and demolition waste. The registration application is available for viewing and copying at the Solid Waste Administration Building at 1527 S. Mayhill Road in Denton and on the internet at [www.cityofdenton.com/pages/permitmods.cfm](http://www.cityofdenton.com/pages/permitmods.cfm).

#### PUBLIC COMMENT/PUBLIC MEETING

Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received at a public meeting for the facility should one be held. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

#### EXECUTIVE DIRECTOR ACTION

The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

#### INFORMATION

Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-30887. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Further information may also be obtained from the City of Denton at the address stated above or by calling William Hindman, P.E., with Chiang, Patel & Yerby, Inc., at (214) 638-0500.

TRD-200805718

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 29, 2008



Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment

#### APPLICATION

The City of Amarillo Transfer Station, 811 S.E. 27th Avenue, Amarillo, Potter County, Texas 79103, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V major amendment. The applicant is requesting a major amendment in order to expand both the capacity and footprint of the Transfer Station. The facility is located approximately 0.35 miles east of the intersection of Interstate Highway 27 and S.E. 26th Avenue, Amarillo, Potter County, Texas. The TCEQ

received the application on July 31, 2008. The permit application is available for viewing and copying at the Amarillo City Hall, 509 S.E. 7th Avenue, Amarillo, Potter County, Texas.

#### ADDITIONAL NOTICE

TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

#### PUBLIC COMMENT/PUBLIC MEETING

You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

#### OPPORTUNITY FOR A CONTESTED CASE HEARING

After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

#### MAILING LIST

If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

#### AGENCY CONTACTS AND INFORMATION

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Further information may also be obtained from the City of Amarillo at the address stated above or by calling Mr. Michael Rice, P.E., at (806) 378-3000.

TRD-200805717

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 29, 2008



#### Notice of Water Quality Applications

The following notices were issued during the period of October 16, 2008 through October 23, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

ALLIED PETROCHEMICAL LLC which operates a facility that recycles non-hazardous used oil, has applied for a renewal of TPDES Permit No. WQ0003903000, which authorizes the discharge of treated process wastewater and storm water at a daily average flow not to exceed 21,000 gallons per day via Outfall 001. The facility is located in the southwest quadrant of the intersection of Farm-to-Market Road 2917 and the Missouri Pacific Railroad Tracks and northeast of the City of Liverpool, Brazoria County, Texas.

CITY OF BLUM has applied for a renewal of TPDES Permit No. WQ0010820001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 62,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 933, approximately 1,200 feet southeast of the intersection of Farm-to-Market Road 933 and the Nolan River in Hill County, Texas.

CITY OF DENTON has applied for a renewal of TPDES Permit No. WQ0014416001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 1,200 feet east of Farm-to-Market Road 1428 and north of Hartlee Field Road in Denton County, Texas.

CITY OF GEORGETOWN has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010489002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed

2,500,000 gallons per day. The facility is located 1,000 feet southeast of the Granger Road crossing of the San Gabriel River and approximately 1.2 miles northeast of the Williamson County Courthouse in Williamson County, Texas.

CITY OF GROESBECK has applied for a major amendment to TPDES Permit No. WQ0010182002 to authorize an increase in the discharge of filter backwash effluent from a water treatment plant from a daily average flow not to exceed 35,000 gallons per day to a daily average flow not to exceed 95,000 gallons per day. The facility is located on the Navasota River approximately one mile below Lake Springfield, approximately two miles north of Groesbeck on State Highway 14 and 0.75 mile east along a public road in Limestone County, Texas.

CITY OF MALONE has applied for a renewal of TPDES Permit No. WQ0010514001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 1150 ft. east of the intersection of Farm-to-Market Road 308 and State Highway 171, on the south side of State Highway 171 in Hill County, Texas.

CITY OF MART has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010645001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located 1,500 feet east of Farm-to-Market Road 1860 and approximately 2,000 feet south of State Highway 164, on the west side of the City of Mart in McLennan County, Texas.

ELG METALS INC which operates a scrap metal processing facility, has applied for a renewal of TPDES Permit No. WQ0003324000, which authorizes the discharge of storm water on an intermittent and variable basis via Outfall 001. The facility is located at 15135 Jacintoport Blvd., Houston, Texas.

LBC HOUSTON LP which operates Bayport Terminal, has applied for a renewal of TPDES Permit No. WQ0002590000, which authorizes the discharge of utility wastewater and storm water on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 11807 Port Road, on either side of Port Road, approximately 1/2 mile east of the intersection of State Highway 146 and Port Road, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

METROPLEX QUARRYS INC which proposes to operate a facility that quarries stone, sand, gravel, aggregate, and soil and produces block stone as intermediate products and dimension stone as final products, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004820000, to authorize the discharge of stormwater on an intermittent and variable basis via Outfalls 001 - 007 (via detention basins). The facility is located at 1405 Hess Road, approximately 1.3 miles west of the intersection of Farm-to-Market Road 2256 and Hess Road in Mineral Wells, in Palo Pinto County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 19 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014908001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014475001 which expired March 1, 2008. The facility is located at 8333 West Rayford Road, approximately 3,000 feet east of the intersection of West Rayford Road and Kuykendahl Road in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 19 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014908002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012153001 which expired March 1, 2008. The facility is located at 25714 Steeple Canyon Road, Spring, Harris County, Texas.

PORT O'CONNOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0013693001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located north of and adjacent to State Highway 185 and approximately 1,000 feet northwest of the Port O'Connor Airport in Calhoun County, Texas.

RED RIVER REDEVELOPMENT AUTHORITY which operates the Red River Army Depot, Lone Star Army Ammunition Plant, has applied for a renewal of TPDES Permit No. WQ0004664000, which authorizes the discharge of combined wastewater (domestic and industrial wastes) from Sewer Plant "X" at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001, and to discharge industrial wastewater from the metals/phosphate treatment facility at a daily average flow not to exceed 800,000 gallons per day via Outfall 002. The facility is located within the Red River Arsenal area which encompasses 19,000 acres south of and adjacent to U.S. Highway 82, south of the community of Hooks and approximately six miles east of New Boston, Bowie County, Texas.

T AND I TAYLOR INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0013643001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1.5 miles southeast of the intersection of Farm-to-Market Roads 2354 and 1405, on the south side of Farm-to-Market Road 2354 in Chambers County, Texas.

TEXAS DEPARTMENT OF AGING AND DISABILITIES SERVICES has applied for a renewal of TPDES Permit No. WQ0010717001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately one mile west of the intersection of State Highway 171 and Farm-to-Market Road 2838, three miles northwest of the City of Mexia in Limestone County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0011959001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. TCEQ received this application on June 12, 2008. The facility is located along and within the right-of-way of Interstate Highway 35 East, at a point approximately 1.4 miles north of Farm-to-Market Road 329 in Ellis County, Texas.

WESTERN DAIRY TRANSPORT LP which operates, a bulk milk transport services terminal, has applied to amend TPDES Permit No. WQ0004314000 (EPA I.D. No. TX0131563) to authorize a change in the disposal method from irrigation on 3.5 acres to discharge into waters in the State and an increase in the volume of treated wastewater to a volume not to exceed a daily average flow of 10,000 gallons per day and a daily maximum flow of 25,000 gallons per day via Outfall 001. The current permit authorizes the disposal of treated vehicle maintenance wastewater via irrigation of 3.5 acres of Coastal Bermuda pasture at an application rate not to exceed 1.26 acre-feet per year per acre irrigated (acre-feet/year/acre). The facility is located at 771 County Road 176 (Smith Springs Road), approximately 0.25 miles northeast of the inter-

section of U.S. Highway 281 and County Road 176, north of the City of Stephenville, Erath County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805716

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 29, 2008

## Texas Facilities Commission

### Request for Proposals #303-9-10561

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-9-10561. TFC seeks a five (5) year lease of approximately 5,588 square feet of office space in Rockwall, Rockwall County, Texas.

The deadline for questions is November 14, 2008; and the deadline for proposals is November 27, 2008 at 3:00 p.m. The award date is January 21, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=79595](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79595).

TRD-200805710

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 29, 2008

### Request for Proposals #303-9-10590

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-9-10590. TFC seeks a five (5) year lease of approximately 4,471 square feet of office space in Denton, Denton County, Texas.

The deadline for questions is November 14, 2008 and the deadline for proposals is December 5, 2008 at 3:00 p.m. The award date is January 21, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=79594](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79594).

TRD-200805690

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 28, 2008

## Texas Forensic Science Commission

### Notice of Intent to Seek Consultant Services

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forensic Science Commission and Sam Houston State University will be seeking Invitation for Offers to hire a consultant to deliver an expert review of two fire incidents that will include but not be limited to the following:

1. Evaluating the origin of each fire using appropriate fire analysis theory and methodology, ensuring the scientific method was employed.
2. Based on the current scientific information and fire technology analysts available, was the fire investigation analysis performed in each case conducted to the appropriate level expected of trained individuals?
3. Was the fire investigation analysis performed in each case conducted to the appropriate level of trained professionals as what would have been accepted fire science at the time each incident took place?
4. This review needs to include whether there was valid determinations of the fire origin, spread and if the state fire marshal and other investigators provided testimony which was in accordance with what would be expected of a fire expert employing the scientific method.
5. A review of the trial testimony of fire experts and investigators is necessary with opinions as to their validity both at the time of testimony as well as if that testimony would have remained reliable as new fire science and literature subsequently came to light.
6. Both cases reached ultimate conclusions several years after the given fire incident actually took place. In your review it is requested that a comparison be made of the fire science literature and practical theory that was available at the time of each incident versus post fire incident advancements in fire science and technology. It is requested that you render opinions as to if these advancements could have been examined and applied retrospectively in a timely manner. The concept of a timely manner would include discussion as to the relative significance of the newer scientific data and if this information would or should have been appropriately available to those involved in the continued investigation of each respective fire incident.
7. In your analyses, opinions are requested as to the quality and scientific expression of the available data to include examination of fire investigative reports, scene photos, fire evidence collection techniques and interpretation of investigative findings. An examination of the autopsy reports from the perspective of a fire expert is requested.
8. If any significant analyses were flawed or testimony was given that was incorrect or misleading of scientific relevance it is requested that these issues be included in your expert report. Negligence or misconduct as determined by your analysis is a critical element the commission members wish to be advised upon. It is requested that recommendation or proposals on how to avoid such future flawed analyses be provided. In a similar manner for either case it would be beneficial to be advised when appropriate analyses and conclusions were performed.

The President of Sam Houston State University has made a finding of fact that the consulting services are necessary. Sam Houston State University does not currently have in house expertise to complete this

project. The Commission believes that for purposes of the investigation the two fire cases must be conducted as an independent review.

The purpose of this engagement is to investigate the two incidents, provide an interpretation, and advise the Commission in the development of recommendations to the Texas Fire Marshals' Office.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University. As authorized by law the University reserves the right to reject any and all bids. As authorized by law the University reserves the right to select the bidder that, in its judgment, provides the best value.

Parties interested in a copy of the Invitation for Offers should contact:

Leigh M. Tomlin

Sam Houston State University

College of Criminal Justice

Texas Forensic Science Commission

Box 2296

816 17th Street

Huntsville, Texas 77341

Phone: 1-888-296-4232

Fax: 1-888-305-2432

Email: [info@fsc.state.tx.us](mailto:info@fsc.state.tx.us)

The proposal submission deadline will be December 8, 2008 at 5:00 p.m. Central Prevailing Time.

TRD-200805719

Fernando Gomez

Sam Houston State University Vice Chancellor and General Counsel

Texas Forensic Science Commission

Filed: October 29, 2008



## Golden Crescent Workforce Development Board

### Public Notice

The Golden Crescent Workforce Development Board (Board) will release its Request for Proposals for Independent Auditing Services on November 3, 2008.

The Board is responsible for administering the workforce development system, including job training, employment, and employment-related educational programs in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca and Victoria counties.

A complete set of specifications may be obtained by calling (361) 576-5872. Interested parties must provide a written response no later than 5:00 p.m. November 24, 2008.

TRD-200805591

Henry Guajardo

Executive Director

Golden Crescent Workforce Development Board

Filed: October 23, 2008



## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 25, 2008, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for electric patient lifts associated with Home Health Mobility Aids medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates currently under consideration by HHSC are: L-E0635: Current Rate = \$121.76, Proposed Rate = \$122.36; J-E0635: Current Rate = \$1,565.42, Proposed Rate = \$1,223.60; and J-E0635-TG (enhanced features): Current Rate = Not a Benefit; Proposed Rate = Manually Priced. The proposed payment rates for the electric patient lifts are proposed to be effective December 1, 2008.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for durable medical equipment (DME) as home health services, and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 10, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [josie.wheatfall@hhsc.state.tx.us](mailto:josie.wheatfall@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to [josie.wheatfall@hhsc.state.tx.us](mailto:josie.wheatfall@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Josie Wheatfall at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200805722

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 29, 2008



### Notice of Public Meeting

The Texas Health and Human Services Commission (HHSC) will conduct a public meeting on November 21, 2008, to receive public comment regarding a proposed amendment to 1 TAC §355.8052, Inpatient Hospital Reimbursement. The purpose of the proposed amendment is to clarify that the intent of the fiscal year 2009 rebasing is contingent on the federal approval and implementation of the Medicaid Reform Waiver and availability of state funds for that purpose. The public

meeting will be held on November 21, 2008, at 1:00 p.m., in the HHSC Lone Star Conference Room, in Building H of the Braker Center, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the building entrance facing Metric Boulevard.

Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time on November 21, 2008, the day of the meeting. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756-3160. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Ms. Rawlings, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, Building H of the Braker Center, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Rawlings at (512) 491-1998.

Persons with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Ms. Rawlings by November 20, 2008, so that appropriate arrangements can be made.

TRD-200805723

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 29, 2008



## Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Medically Dependent Children Program (MDCP) waiver, which is a Medicaid Home and Community-Based Services waiver under the authority of §1915(c) of the Social Security Act. The current §1915(c) waiver is approved from September 1, 2007, to August 31, 2012. The MDCP waiver provides supports to families and primary caregivers of individuals under age 21, who wish to move from a nursing facility to the community or to remain in the community. MDCP strives to support inclusion of children with disabilities in a cost-effective manner through a process that does not supplant the family role and to support permanency planning for all program participants. MDCP services include respite, adaptive aids, adjunct support services, financial management services, minor home modifications, and transition assistance services.

This amendment adds Registered Nurses and Licensed Vocational Nurses as providers of respite and adjunct support services through the Consumer Directed Services option.

HHSC is requesting that the waiver amendment be approved for the period beginning February 1, 2009, through August 31, 2012. This amendment maintains cost neutrality of service costs for federal fiscal years 2009 through 2012.

To obtain copies of the proposed waiver, interested parties may contact Carmen Samilpa-Hernandez, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1128, fax (512) 491-1953, e-mail Carmen.Samilpa-Hernandez@hhsc.state.tx.us.

TRD-200805666

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 27, 2008



## Texas Department of Insurance

### Company Licensing

Application to change the name of ANNUITY & LIFE REASSURANCE AMERICA, INC. to HERITAGE UNION LIFE INSURANCE COMPANY, a foreign life company. The home office is in Phoenix, Arizona.

Application to change the name of DAIMLERCHRYSLER INSURANCE COMPANY to CHRYSLER INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Farmington Hills, MI.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200805720

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 29, 2008



### Notice of Premium Finance Assessment, Examination Fee/Assessment and Maintenance Tax Rate Determination

Rates of Assessment for Expenses of Examination of Foreign and Domestic Insurance Companies and Workers' Compensation Self-Insurance Groups; Costs of Examinations and Investigations and General Administrative Expenses for the Regulation of Insurance Premium Finance Companies; and the Assessment of Insurance Maintenance Taxes and Fees

Sections 401.151 - 401.152 and 401.155 - 401.156, §651.006, and Subtitles C and D of Title 3 of the Texas Insurance Code and Chapters 403, 405, and 407A of the Labor Code require the Commissioner of Insurance to determine rates for the assessment for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups; the assessment to cover the cost of examinations, investigations and general administrative expenses for the regulation of insurance premium finance companies; and the assessment of insurance maintenance taxes and fees. The Department is gathering information to be utilized in determining the rates of assessment of each tax and assessment.

### NOTICE OF INFORMAL MEETING

An informal meeting to provide information, receive comments and information from all parties is scheduled for Thursday, November 13, 2008, at 10:00 a.m. in Room102, at the William P. Hobby, Jr., State Office Building, Tower III, 333 Guadalupe Street, Austin, Texas, to informally discuss the preliminary estimates of the projected rates of assessment, and to make available certain back-up documentation regarding the process and information related to determining the estimated projected rates of assessment and fees.

### NOTICE OF PROJECTED RATES OF ASSESSMENT, FEES, AND PROCESS

After the Informal Meeting, the Department will submit the projected rates of assessment and fees with the Chief Clerk and will post the projected rates of assessment and fees on the web at <http://www.tdi.state.tx.us/> on November 14, 2008. The projected rates of assessment and fees can be viewed at the site and persons may obtain copies of the projected rates of assessment by submitting a request to Mr. Joe Meyer, Deputy Chief Financial Officer, Texas



Department of Insurance, Financial Services Division, MC108-3A, and P.O. Box 149104, Austin, Texas 78714-9104.

Written comments on the projected rates of assessment and fees may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, on or before Monday, December 1, 2008, at 5:00 p.m. An additional copy of the comments must be simultaneously submitted to Joe Meyer, Deputy Chief Financial Officer, Texas Department of Insurance, Financial Services Division, P.O. Box 149104, MC 108-3A, Austin, Texas 78714-9104.

#### ASSESSMENT FEES AND DETERMINATION

Unless otherwise noticed, the Department will determine the rates of assessment and fees 25 days after the projected rates are filed in the Chief Clerk's Office and posted on its web site. Any request for a hearing should be submitted separately and in writing no later than November 25, 2008. The written request should be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-200805661

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 27, 2008



### Legislative Budget Board

#### Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations. Sec. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

- (1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;
- (2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

#### Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2007. The largest component of Texas personal income is wage and salary disbursements, estimated at \$482.8 billion during calendar 2007. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated \$726.1 billion in calendar year 2007.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions, principally social security payroll taxes paid by employees and self-employed, are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be \$918.0 billion for calendar year 2007.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past sixteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

#### Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources listed alphabetically: (1) IHS Global Insight, (2) Moody's Economy.com, (3) Peryman Group, and (4) University of North Texas Center for Economic Development & Research. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 14, 2008 hearing, will take into account the most recent changes in the national and state economies.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include more detailed discussion of the forecasting methods used. See the following issues of the Texas Register: (5 TexReg 4272), (7 TexReg 3727), (9 TexReg 5219), (11 TexReg 4590), (13 TexReg 4599), (15 TexReg 6876), (17 TexReg 7702), (19 TexReg 9053), (21 TexReg 10919), (23 TexReg 11472), (25 TexReg 11735), (27 TexReg 10977), (29 TexReg 10612), and (31 TexReg 9641).

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2010-11 biennium over the 2008-09 biennium. These forecasts range from 1.0774 or 7.74 percent to 1.1482 or 14.82 percent.

Table 4 briefly outlines the sources and dates for the Texas personal income growth rates presented in Table 3.

The personal income growth rates shown in Table 3, or any more recent forecasts, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one or any combination of the growth rates shown in adopting a Texas personal income growth rate for the 2010-11 biennium.

#### **Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2008-09 Biennium**

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2008-09 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of October 29, 2008 the staff estimates this amount to be \$72,992,740,945. This item multiplied by the estimated rate of growth of Texas personal income from the 2008-09 biennium to the 2010-11 biennium produces the limitation on appropriations for the 2010-11 biennium under Article VIII, Section 22, of the Texas Constitution.

#### **Calculating the 2010-11 Limitation**

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2010-11 biennium may be illustrated by selecting a growth rate and applying it to the 2008-09 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth rate is adopted, current estimates suggest a limitation on 2010-11 biennial appropriations from tax revenue not dedicated by the Constitution ranging from \$78.6 billion to \$83.8 billion.

#### **Method of Calculating the 2008-09 Appropriations from State Tax Revenue Not Dedicated by the Constitution**

As stated above, LBB staff estimates the amount of appropriations from state tax revenue not dedicated by the Constitution in the 2008-09 biennium to be \$72,992,740,945. This section details the sources of information used in this calculation.

Total appropriations for the 2008-09 biennium include those made by the in Eightieth Legislature in House Bill 1 (General Appropriations Act), House Bill 2 (Property Tax Relief), House Bill 15 (Supplemental Appropriations), and Senate Bill 1719 (Miscellaneous Claims). Any subsequent appropriations made by the Eighty-first Legislature for the 2008-09 biennium would also be included in total appropriations.

Section I of Table 6 shows for general revenue related funds the total amount of appropriations, the amount financed from constitutionally dedicated tax revenue, from non-tax revenue and the remainder--the amount financed from tax revenue not dedicated by the Constitution--which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund.

#### **I. General Revenue Related Funds**

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) all other line item appropriations.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2008 amounts are based on actual 2008 expenditures. Amounts for fiscal year 2009 are taken from House Bill 1, Eightieth Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 7 are from House Bill 1, Eightieth Legislature. Appropriation figures have been adjusted to incorporate certain Article IX appropriations, as well as Governor's vetoes, House Bill 2, House Bill 15, and Senate Bill 1719.

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the \$80,813,996,706 of general revenue related fund appropriations, \$66,020,055,889 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into general revenue related funds are estimated to total \$4,170,981,368 during the 2008-09 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at \$10,622,959,449 for the 2008-09 biennium.

#### **II. Appropriations from Funds Outside of General Revenue**

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining five percent is deposited into Account 0009 - Game, Fish and Water Safety. The state imposes an insurance companies maintenance tax deposited into Account 0036 - Texas Department of Insurance Operating.

A portion of the motor vehicles sales tax, franchise tax and cigarette tax is deposited into Account 0304 - Property Tax Relief. The state also taxes the sale of fireworks, a portion of which is deposited into Account 5066 - Rural Volunteer Fire Department Insurance. In addition, part of the sales tax and a motor vehicles sales tax is deposited into Account 5071 - Emissions Reduction Plan.

Appropriations from tax revenue not dedicated by the Constitution in these accounts are included in this calculation. The appropriations and revenues are based on actual 2008 and estimated 2009 data.

**Grand Total**

A grand total of \$88,562,937,355 in 2008-09 biennial appropriations is included in this analysis. Of this amount, \$4,170,981,368 is financed out of taxes dedicated by the State Constitution. Another

\$11,399,215,041 is financed out of non-tax revenue. The remaining \$72,992,740,945 is financed out of tax revenue not dedicated by the State Constitution. This amount serves as a base for calculating the limitation on 2010-11 biennial appropriations from tax revenue not dedicated by the Constitution, as required by Article VIII, Section 22, of the Texas Constitution.

**Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations**

**TABLE 1**  
**U.S. DEPARTMENT OF COMMERCE PERSONAL**  
**INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2007**  
**In Millions of Current Dollars**

<b>Earnings by Place of Work</b>	<b>Amount</b>	<b>Percent of Total</b>
Wage and Salary Disbursements	\$482,754	66.5%
Supplements to Wages and Salaries	106,442	14.7%
Proprietors' Income		
Farm	\$1,540	
Nonfarm	<u>135,378</u>	
Subtotal	<u>136,918</u>	<u>18.9%</u>
Total Earnings by Place of Work	\$726,114	100.0%
<b>Derivation of Total Personal Income</b>		
Earnings by Place of Work (from above)	\$726,114	
Less: Personal Contribution for Social Insurance	\$36,817	
Plus: Adjustment for Residence	<u>(2,055)</u>	
Equals: Net Earnings by Place of Residence	\$687,243	74.9%
Plus: Dividends, Interest and Rent	118,402	12.9%
Plus: Personal Current Transfer Receipts	<u>112,370</u>	<u>12.2%</u>
Total Personal Income	\$918,014	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, September 2008.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 2**  
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME  
1976-77 TO 2006-07 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1974-75	1976-77	1.282	28.2
1976-77	1978-79	1.308	30.8
1978-79	1980-81	1.349	34.9
1980-81	1982-83	1.252	25.2
1982-83	1984-85	1.180	18.0
1984-85	1986-87	1.078	7.8
1986-87	1988-89	1.100	10.0
1988-89	1990-91	1.150	15.0
1990-91	1992-93	1.133	13.3
1992-93	1994-95	1.123	12.3
1994-95	1996-97	1.149	14.9
1996-97	1998-99	1.174	17.4
1998-99	2000-01	1.164	16.4
2000-01	2002-03	1.057	5.7
2002-03	2004-05	1.124	12.4
2004-05	2006-07	1.178	17.8

Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 3**  
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME  
USING FIVE ECONOMETRIC MODELS  
2008-09 BIENNIUM TO 2010-11 BIENNIUM

<b>Source of Forecast</b>	<b>2010-11 Texas Personal Income Growth Rate</b>
1. IHS Global Insight	1.1084
2. Moody's Economy.com	1.1092
3. Perryman Group	1.1482
4. Texas Comptroller of Public Accounts*	
5. University of North Texas Center for Economic Development & Research	1.0774

\* The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 14, 2008 hearing, will take into account the most recent changes in the national and state economies.

Note: The growth rates shown above can be interpreted in percentage terms. For example, the growth rate of 1.1084 for the IHS Global Insight forecast of Texas personal income indicates estimated personal income growth of 10.84 percent for the 2010-11 biennium.

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 4**  
SUMMARY OF SOURCES AND METHODS FOR  
TEXAS PERSONAL INCOME GROWTH RATES FOR THE  
2010-11 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. IHS Global Insight	Econometric	October 2008
2. Moody's Economy.com	Econometric	October 2008
3. Perryman Group	Econometric	October 2008
4. Texas Comptroller of Public Accounts*	Econometric	
5. University of North Texas Center for Economic Development & Research	Econometric	October 2008

\* The Texas Comptroller of Public Accounts is currently completing a new forecast of Texas personal income. This forecast, which will be available prior to the Legislative Budget Board's November 14, 2008 hearing, will take into account the most recent changes in the national and state economies.

Source: Compiled by the Legislative Budget Board, October 2008.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 5**  
TWO ILLUSTRATIONS OF A POSSIBLE  
LIMIT ON 2010-11 BIENNIUM APPROPRIATIONS  
OF STATE TAX REVENUE NOT DEDICATED BY  
THE TEXAS CONSTITUTION  
In Millions of Dollars

1. 2008-09 Base	\$ 72,992.7	\$ 72,992.7
2. Illustrative Growth Rates	<u>X 1.0774</u>	<u>X 1.1482</u>
3. 2010-11 Limitation on Growth in Appropriations	<u>\$ 78,642.3</u>	<u>\$ 83,810.2</u>

Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 6**  
2008-09 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE LIMITATION BASE

I. General Revenue Related Funds	2008 Expenditures/
A. Appropriations	2009 Appropriations
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 80th Legislature	
(a) Fiscal Programs - Comptroller of Public Accounts	\$ 1,282,488
A.1.1. Strategy: Voter Registration	
(b) Fiscal Programs - Comptroller of Public Accounts	4,720,346
A.1.2. Strategy: Miscellaneous Claims	
(c) Fiscal Programs - Comptroller of Public Accounts	239,503,638
A.1.4. Reimbursement - Beverage Tax	
(d) Fiscal Programs - Comptroller of Public Accounts	4,635,522
A.1.6. County Taxes - University Lands	
(e) Fiscal Programs - Comptroller of Public Accounts	225,804,408
A.1.8. Unclaimed Property	
(f) Funds Appropriated to the Comptroller for Social Security and BRP	948,356,914
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	
(g) Employees Retirement System	1,798,778,450
A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	
(h) Department of State Health Services	4,720,809
Vendor Drug Rebates—Public Health	
(i) Department of State Health Services	1,475,044
D.1.6. Strategy: Texasonline	
(j) Health and Human Services	15,462,754
Medicaid Program Income	
(k) Health and Human Services	448,118,605
Vendor Drug Rebates—Medicaid	
(l) Health and Human Services	7,995,415
Cost Sharing - Medicaid Clients	
(m) Health and Human Services	79,158,220
Vendor Drug Rebates-Supplemental Rebates	
(n) Health and Human Services	11,509,237
Premium Co-Payments, Low Income Children	
(o) Health and Human Services	5,500,551
Experience Rebates-CHIP	
(p) Health and Human Services	6,927,878
Vendor Drug Rebates-CHIP	
(q) Texas Education Agency	21,985,283

Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 6**  
2008-09 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE LIMITATION BASE

	B.3.6. Strategy: Certification Exam Administration	
(r)	School For The Blind And Visually Impaired	495,318
	C.1.1. Strategy: Educ Prof Salary Increases	
(s)	School For The Deaf	546,574
	C.1.1. Strategy: Educ Prof Salary Increases	
(t)	Teacher Retirement System	2,435,245,118
	A.1.1. Strategy: TRS - Public Education - (GR Portion)	
(u)	Teacher Retirement System	493,637,068
	A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	
(v)	Teacher Retirement System	470,689,658
	A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion)	
(w)	Optional Retirement Program	246,026,283
	A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(x)	Office Of Court Administration, Texas Judicial Council	24,976
	C.1.2. Strategy: Texasonline	
(y)	Judiciary Section, Comptroller's Department	84,883,122
	A: Goal - D: Goal (GR Portion)	
(z)	Department Of Public Safety	615,384
	E.4.1. Strategy: Texasonline	
(aa)	Department Of Housing And Community Affairs	21,930
	E.1.4. Strategy: Texasonline	
(ab)	Texas Lottery Commission	203,288,687
	A.1.6. Strategy: Lottery Operator Contract	
(ac)	Texas Lottery Commission	24,645,508
	B.1.5. Strategy: Bingo Prize Fee Allocations	
(ad)	Board Of Chiropractic Examiners	59,107
	A.1.2. Strategy: Texasonline	
(ae)	Texas State Board Of Dental Examiners	377,654
	A.2.2. Strategy: Texasonline	
(af)	Funeral Service Commission	77,545
	A.1.2. Strategy: Texasonline	
(ag)	Board Of Professional Geoscientists	50,100
	A.1.2. Strategy: Texasonline	
(ah)	Department Of Insurance	386,054
	A.2.4. Strategy: Texasonline	
(ai)	Board Of Professional Land Surveying	20,390
	A.1.3. Strategy: Examination	



Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 6  
2008-09 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE LIMITATION BASE

(aj)	Board Of Professional Land Surveying	27,430
	A.1.4. Strategy: Texasonline	
(ak)	Department Of Licensing And Regulation	731,395
	A.1.5. Strategy: Texasonline	
(al)	Texas Medical Board	660,381
	A.1.2. Strategy: Texasonline	
(am)	Texas Board of Nursing	716,163
	A.1.2. Strategy: Texasonline	
(an)	Optometry Board	33,735
	A.1.2. Strategy: Texasonline	
(ao)	Board Of Pharmacy	400,614
	A.1.2. Strategy: Texasonline	
(ap)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	258,838
	A.1.2. Strategy: Texasonline	
(aq)	Board Of Plumbing Examiners	301,707
	A.1.2. Strategy: Texasonline	
(ar)	Board Of Podiatric Medical Examiners	8,665
	A.1.2. Strategy: Texasonline	
(as)	Board Of Examiners Of Psychologists	59,011
	A.1.2. Strategy: Texasonline	
(at)	Racing Commission	23,250
	B.1.2. Strategy: Texasonline	
(au)	Real Estate Commission	672,201
	A.1.2. Strategy: Texasonline	
(av)	Residential Construction Commission	581,133
	A.1.2. Strategy: Texasonline	
(aw)	Residential Construction Commission	463,600
	B.1.3. Strategy: Third-Party Inspections	
(ax)	Department of Savings and Mortgage Lending	110,347
	B.1.4. Strategy: Texasonline	
(ay)	Board Of Tax Professional Examiners	16,250
	A.1.2. Strategy: Texasonline	
(az)	Board Of Veterinary Medical Examiners	66,035
	A.1.2. Strategy: Texasonline	
(ba)	Multiple Agencies: Earned Federal Funds	110,401,157
	Sec. 6.26. Definition, Appropriation, Reporting and Audit of Earned Federal Funds	

Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 6**  
2008-09 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE LIMITATION BASE

(bb)	Adjustment for Texas Education Agency Attendance Credit Revenue	(87,800,000)		
(bc)	Adjustment for Property Tax Relief Fund Revenue	988,216,821		
	Subtotal, "Estimated to Be"			<u>\$8,802,974,771</u>
2.	All Other Line Items			<u>\$72,011,021,935</u>
TOTAL (General Revenue Related Fund Appropriations)				<u>\$80,813,996,706</u>

Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

	<u>2008</u>	<u>2009</u>	<u>2008-2009</u> <u>Biennium</u>
<b>General Revenue Funds "Recap" Amount</b>	\$40,033,437,588	\$39,918,100,562	\$79,951,538,150
Less "Estimated to Be" Items:			
<b>Fiscal Programs - Comptroller of Public Accounts</b>	5,000,000	1,000,000	6,000,000
A.1.1. Strategy: Voter Registration (HB1, Article I-22)			
<b>Fiscal Programs - Comptroller of Public Accounts</b>	1,770,000	1,770,000	3,540,000
A.1.2. Strategy: Miscellaneous Claims (HB1, Article I-22)			
<b>Fiscal Programs - Comptroller of Public Accounts</b>	114,442,000	117,876,000	232,318,000
A.1.4. Reimbursement - Beverage Tax (HB1, Article I-22)			
<b>Fiscal Programs - Comptroller of Public Accounts</b>	2,565,016	2,689,178	5,254,194
A.1.6. County Taxes - University Lands (HB1, Article I-22)			
<b>Fiscal Programs - Comptroller of Public Accounts</b>	90,000,000	95,000,000	185,000,000
A.1.8. Unclaimed Property (HB1, Article I-22)			
<b>Funds Appropriated to the Comptroller for Social Security and BRP</b>	471,463,274	482,660,710	954,123,984
A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (HB1, Article I-27)			
<b>Employees Retirement System</b>	916,776,114	943,574,640	1,860,350,754
A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (HB1, Article I-31)			
<b>Department of State Health Services</b>	1,393,000	1,393,000	2,786,000
Vendor Drug Rebates-Public Health (Rev Code 3640) (HB1, Article II-41)			

Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

<b>Department of State Health Services</b> D.1.6. Strategy: Texasonline (HB1, Article II-43)	1,049,240	1,049,240	2,098,480
<b>Health and Human Services</b> Medicaid Program Income (HB1, Article II-68)	2,897,025	2,897,025	5,794,050
<b>Health and Human Services</b> Vendor Drug Rebates—Medicaid (HB1, Article II-68)	212,237,307	209,761,151	421,998,458
<b>Health and Human Services</b> Cost Sharing - Medicaid Clients (HB1, Article II-68)	6,297,487	7,972,186	14,269,673
<b>Health and Human Services</b> Vendor Drug Rebates-Supplemental Rebates (HB1, Article II-68)	39,687,046	37,428,049	77,115,095
<b>Health and Human Services</b> Premium Co-Payments, Low Income Children (HB1, Article II-68)	7,355,310	7,540,965	14,896,275
<b>Health and Human Services</b> Experience Rebates-CHIP (HB1, Article II-68)	2,028,952	2,132,980	4,161,932
<b>Health and Human Services</b> Vendor Drug Rebates-CHIP (HB1, Article II-68)	2,578,299	2,710,665	5,288,964
<b>Texas Education Agency</b> B.3.6. Strategy: Certification Exam Administration (HB1, Article III-3)	11,062,000	11,135,000	22,197,000
<b>School For The Blind And Visually Impaired</b> C.1.1. Strategy: Educ Prof Salary Increases (HB1, Article III-25)	153,037	310,664	463,701
<b>School For The Deaf</b> C.1.1. Strategy: Educ Prof Salary Increases (HB1, Article III-29)	155,798	316,270	472,068
<b>Teacher Retirement System</b>	1,189,470,352	1,237,006,522	2,426,476,874

Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

A.1.1. Strategy: TRS - Public Education - (GR Portion)  
(HB1, Article III-33)

<b>Teacher Retirement System</b>	274,683,675	284,291,225	558,974,900
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A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)  
(HB1, Article III-33)

<b>Teacher Retirement System</b>	220,594,269	231,675,389	452,269,658
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A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion)  
(HB1, Article III-33)

<b>Optional Retirement Program</b>	121,564,539	126,427,120	247,991,659
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A.1.1. Strategy: Optional Retirement Program (GR Portion)  
(HB1, Article III-36)

<b>Office Of Court Administration, Texas Judicial Council</b>	10,488	13,576	24,064
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C.1.2. Strategy: Texasonline  
(HB1, Article IV-23)

<b>Judiciary Section, Comptroller's Department</b>	48,020,552	48,074,972	96,095,524
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A: Goal - D: Goal (GR Portion)  
(HB1, Article IV-31)

<b>Department Of Public Safety</b>	290,000	290,000	580,000
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E.4.1. Strategy: Texasonline  
(HB1, Article V-47)

<b>Department Of Housing And Community Affairs</b>	19,120	19,120	38,240
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E.1.4. Strategy: Texasonline  
(HB1, Article VII-2)

<b>Texas Lottery Commission</b>	106,232,562	108,111,611	214,344,173
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A.1.6. Strategy: Lottery Operator Contract  
(HB1, Article VII-8)

<b>Texas Lottery Commission</b>	12,500,500	12,771,000	25,271,500
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B.1.5. Strategy: Bingo Prize Fee Allocations  
(HB1, Article VII-8)

<b>Board Of Chiropractic Examiners</b>	29,850	29,850	59,700
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Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

A.1.2. Strategy: Texasonline  
(HB1, Article VIII-9)

<b>Texas State Board Of Dental Examiners</b>	184,629	184,629	369,258
A.2.2. Strategy: Texasonline (HB1, Article VIII-17)			

<b>Funeral Service Commission</b>	39,000	39,000	78,000
A.1.2. Strategy: Texasonline (HB1, Article VIII-18)			

<b>Board Of Professional Geoscientists</b>	30,000	30,000	60,000
A.1.2. Strategy: Texasonline (HB1, Article VIII-20)			

<b>Department Of Insurance</b>	380,000	380,000	760,000
A.2.4. Strategy: Texasonline (HB1, Article VIII-26)			

<b>Board Of Professional Land Surveying</b>	8,180	8,180	16,360
A.1.3. Strategy: Examination (HB1, Article VIII-35)			

<b>Board Of Professional Land Surveying</b>	14,000	14,000	28,000
A.1.4. Strategy: Texasonline (HB1, Article VIII-35)			

<b>Department Of Licensing And Regulation</b>			
	331,200	331,200	662,400
A.1.5. Strategy: Texasonline (HB1, Article VIII-37)			

<b>Texas Medical Board</b>	316,841	316,841	633,682
A.1.2. Strategy: Texasonline (HB1, Article VIII-42)			

<b>Texas Board of Nursing</b>	325,000	325,000	650,000
A.1.2. Strategy: Texasonline (HB1, Article VIII-46)			

<b>Optometry Board</b>	16,400	16,400	32,800
A.1.2. Strategy: Texasonline (HB1, Article VIII-49)			

<b>Board Of Pharmacy</b>	209,480	212,610	422,090
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Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

A.1.2. Strategy: Texasonline  
(HB1, Article VIII-52)

<b>Executive Council Of Physical Therapy &amp; Occupational Therapy Examiners</b>	124,675	124,675	249,350
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-54)

<b>Board Of Plumbing Examiners</b>	155,000	155,000	310,000
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-56)

<b>Board Of Podiatric Medical Examiners</b>	4,130	4,130	8,260
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-58)

<b>Board Of Examiners Of Psychologists</b>	30,000	30,000	60,000
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-59)

<b>Racing Commission</b>	23,250	23,250	46,500
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B.1.2. Strategy: Texasonline  
(HB1, Article VIII-61)

<b>Real Estate Commission</b>	322,000	322,000	644,000
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-66)

<b>Residential Construction Commission</b>	315,000	315,000	630,000
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-69)

<b>Residential Construction Commission</b>	100,000	100,000	200,000
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B.1.3. Strategy: Third-Party Inspections  
(HB1, Article VIII-69)

<b>Department of Savings and Mortgage Lending</b>	67,867	67,868	135,735
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B.1.4. Strategy: Texasonline  
(HB1, Article VIII-72)

<b>Board Of Tax Professional Examiners</b>	16,250	16,250	32,500
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A.1.2. Strategy: Texasonline  
(HB1, Article VIII-78)

<b>Board Of Veterinary Medical Examiners</b>	33,650	33,650	67,300
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Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

**TABLE 7**  
CALCULATION OF "ALL OTHER LINE ITEMS"  
FOR THE 2008-09 BIENNIUM

A.1.2. Strategy: Texasonline  
(HB1, Article VIII-85)

<b>Multiple Agencies: Earned Federal Funds</b>	47,203,701	46,961,359	94,165,060
Sec. 6.26. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (HB1, Article IX-32)			
Subtotal, Line Items Shown Separately	<u>\$3,912,577,065</u>	<u>\$4,027,939,150</u>	<u>\$7,940,516,215</u>
Total Other Line Items	<u>\$36,120,860,523</u>	<u>\$35,890,161,412</u>	<u>\$72,011,021,935</u>

TRD-200805681  
John O'Brien  
Director  
Legislative Budget Board  
Filed: October 28, 2008

**Texas Lottery Commission**

Instant Game Number 1142 "Maximum Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1142 is "MAXIMUM MILLIONS".  
The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1142 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1142.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BAG OF MONEY SYMBOL, DOLLAR BILL SYMBOL, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1142 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WINX10
DOLLAR BILL SYMBOL	AUTO
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND

\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MIL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1142), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1142-0000001-001.

K Pack - A pack of "MAXIMUM MILLIONS" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAXIMUM MILLIONS" Instant Game No. 1142 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAXIMUM MILLIONS" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "DOLLAR BILL" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "MONEY BAG" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS play symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

E. Non-winning prize symbols will not match winning prize symbols on a ticket.

F. No more than five matching non-winning prize symbols on a ticket.

G. The "DOLLAR BILL" (auto win) play symbol may only appear once on a ticket.

H. The "MONEY BAG" (win x 10) play symbol will only appear on winning tickets as dictated by the prize structure.

I. The top prize will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MAXIMUM MILLIONS" Instant Game prize of \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAXIMUM MILLIONS" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAXIMUM MILLIONS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MAXIMUM MILLIONS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MAXIMUM MILLIONS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

Figure 2: GAME NO. 1142 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	720,000	5.00
\$50	504,000	7.14
\$100	43,500	82.76
\$200	10,500	342.86
\$500	2,300	1,565.22
\$1,000	180	20,000.00
\$5,000	60	60,000.00
\$10,000	16	225,000.00
\$1,000,000	4	900,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1142 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1142, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805705

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 29, 2008



Instant Game Number 1145 "Blackjack"

### 1.0 Name and Style of Game.

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 tickets in the Instant Game No. 1142. The approximate number and value of prizes in the game are as follows:

A. The name of Instant Game No. 1145 is "BLACKJACK". The play style is "beat score with win all".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1145 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1145.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1145 - 1.2D

PLAY SYMBOL	CAPTION
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
\$1.00	ONES
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1145), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1145-0000001-001.

K. Pack - A pack of "BLACKJACK" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK" Instant Game No. 1145 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACKJACK" Instant Game is determined once the latex on the ticket is scratched off to expose 14 (fourteen) Play Symbols. The player must add the cards in each HAND. If the total of any HAND beats the DEALER'S HAND, the player wins the PRIZE shown for that HAND. If any HAND totals BLACKJACK (21), the player WINS ALL 4 PRIZES instantly! A=11, K, Q, J=10. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 14 (fourteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 14 (fourteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ties between HAND 1, 2, 3 or 4 and the DEALER'S HAND.

C. When HAND 1, 2, 3 or 4 totals 21, no other hand will beat the DEALER'S HAND.

D. No more than one HAND on a ticket may total 21.

E. The DEALER'S HAND will never total 21.

F. HAND 1, 2, 3 or 4 will always total 14 or higher.

G. The DEALER'S HAND will always total 16 or higher.

H. No HAND on a ticket will contain two Ace play symbols.

I. No duplicate non-winning HANDS in the same order.

J. No duplicate non-winning prize symbols on a ticket.

K. A non-winning prize symbol will never be the same as the winning prize symbol(s).

L. The top prize will appear once on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACKJACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLACK-JACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLACKJACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1145. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1145 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	547,200	16.67
\$2	912,000	10.00
\$4	228,000	40.00
\$5	60,800	150.00
\$10	60,800	150.00
\$20	22,800	400.00
\$40	14,820	615.38
\$100	1,140	8,000.00
\$1,000	114	80,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1145

without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1145, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805706

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 29, 2008



Instant Game Number 1150 "Precious Jewels"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1150 is "PRECIOUS JEWELS". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1150 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1150.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, RING SYMBOL, JEWELS SYMBOL, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$2,500 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1150 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
RING SYMBOL	AUTO
JEWELS SYMBOL	WINALL
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY

<b>\$100</b>	<b>ONE HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$2,500</b>	<b>25 HUND</b>
<b>\$100,000</b>	<b>HUN THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,500 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1150), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1150-0000001-001.

K. Pack - A pack of "PRECIOUS JEWELS" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PRECIOUS JEWELS" Instant Game No. 1150 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PRECIOUS JEWELS" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) Play Symbols. If the player matches any of YOUR NUMBERS play symbols to any of the JEWEL NUMBERS play symbols, the player wins PRIZE shown for that number. If the player reveals a "ring" play symbol, the player wins the PRIZE shown for that symbol instantly. If the player reveals a "jewels" symbol, the player wins ALL 25 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 55 (fifty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 55 (fifty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
- The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JEWELS" (win all) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. When the "JEWELS" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching to any of the JEWEL NUMBER play symbols.

D. No more than four (4) matching non-winning prize symbols will appear on a ticket.

E. No duplicate JEWEL NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

I. The "RING" (auto win) play symbol will never appear more than once on a ticket.

J. The top prize symbol will appear on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "PRECIOUS JEWELS" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PRECIOUS JEWELS" Instant Game prize of \$1,000, \$2,500 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is

validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PRECIOUS JEWELS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "PRECIOUS JEWELS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "PRECIOUS JEWELS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1150. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1150 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	326,400	12.50
\$20	571,200	7.14
\$50	81,600	50.00
\$100	58,718	69.48
\$200	8,840	461.54
\$500	2,686	1,518.99
\$1,000	238	17,142.86
\$2,500	68	60,000.00
\$100,000	4	1,020,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.89. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1150 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1150, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805611

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 24, 2008

### Instant Game Number 1157 "What's Your Number?"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1157 is "WHAT'S YOUR NUMBER?". The play style for this game is "row/column/diagonal".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1157 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1157.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

**Figure 1: GAME NO. 1157 - 1.2D**

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
1	
2	
3	
4	
5	
6	
7	
8	
9	
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1157), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1157-0000001-001.

K. Pack - A pack of "WHAT'S YOUR NUMBER?" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WHAT'S YOUR NUMBER?" Instant Game No. 1157 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WHAT'S YOUR NUMBER?" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. The player must scratch the YOUR NUMBER BOX. If a player reveals 3 YOUR NUMBER play symbols in a row, column or diagonal in the PLAY AREA, the player wins the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may only win once.

C. No more than two matching play symbols appearing in the tic-tac-toe play area with the exception of those that match the YOUR NUMBER BOX play symbol.

D. No more than four matching YOUR NUMBER BOX play symbols on a ticket.

E. Every ticket will have at least two tic-tac-toe play symbols that match the YOUR NUMBER BOX play symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WHAT'S YOUR NUMBER?" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WHAT'S YOUR NUMBER?" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated

winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WHAT'S YOUR NUMBER?" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WHAT'S YOUR NUMBER?" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WHAT'S YOUR NUMBER?" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 tickets in the Instant Game No. 1157. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1157 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	662,400	16.67
\$2	1,104,000	10.00
\$4	276,000	40.00
\$5	73,600	150.00
\$10	73,600	150.00
\$20	32,200	342.86
\$40	17,940	615.38
\$100	920	12,000.00
\$1,000	92	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1157 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1157, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805707  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 29, 2008



Instant Game Number 1159 "Treasure"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1159 is "TREASURE". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1159 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1159.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, SHOVEL SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1159 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
SHOVEL SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1159), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1159-0000001-001.

K. Pack - A pack of "TREASURE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TREASURE" Instant Game No. 1159 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TREASURE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the TREASURE NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "SHOVEL" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "SHOVEL" (doubler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

C. No more than two matching non-winning prize symbols will appear on a ticket.

D. No duplicate TREASURE NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "TREASURE" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TREASURE" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropri-

ate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TREASURE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TREASURE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TREASURE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1159. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1159 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	739,680	10.87
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	41,875	192.00
\$200	6,499	1,237.11
\$2,000	40	201,000.00
\$20,000	8	1,005,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1159 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1159, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805708  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 29, 2008

## Office of Public Utility Counsel

### Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007) (PURA), the Office of Public Utility Counsel (Office) is conducting its annual public hearing.

The public hearing will be held on the date and time, and at the location indicated below.

Friday, November 21, 2008, from 2:30 - 3:30 p.m.

City Hall

City Commission Chamber

202 E. Pilar (Corner of E. Pilar & S. Pecan)

Nacogdoches, Texas 75961

Located in the Downtown Square, 1st Floor

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, courts, and other federal regulatory bodies. The Office seeks public input to assist the office in developing a plan of priorities, and in receiving comments on the office's functions and effectiveness.

Contact Carin Nersesian, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 for further information.

TRD-200805640  
Don Ballard  
Public Counsel  
Office of Public Utility Counsel  
Filed: October 27, 2008

## Public Utility Commission of Texas

### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 21, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC dba Suddenlink Communications for State-Issued Certificate of Franchise Authority; Project Number 36295 before the Public Utility Commission of Texas.

The requested amended CFA service area expands the service area footprint to include the city limits of Onalaska, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text tele-

phone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36295.

TRD-200805663  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 27, 2008

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on October 22, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Windjammer Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 36298 before the Public Utility Commission of Texas.

The requested CFA service area includes the following Texas counties: Bandera, Young, Anderson, Bell, Webb, Jim Hogg, and Clay and the following Texas cities: Cooper, Encinal, Freer, Jourdanon, Poteet, and Stockdale.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36298.

TRD-200805664  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 27, 2008

◆ ◆ ◆  
**Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on October 23, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, LP for an Amendment to a State-Issued Certificate of Franchise Authority; Project Number 36310 before the Public Utility Commission of Texas.

The requested amended CFA service area expands the service area footprint to include the municipalities of Olmos Park and Leon Valley, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36310.

TRD-200805665

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 27, 2008

◆ ◆ ◆  
**Notice of Application for Service Area Exception within Travis County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 20, 2008, for an amendment to certificated service area for a service area exception within Travis County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Travis County. Docket Number 36288.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area boundary exception to allow PEC to provide service to a specific customer located within the certificated service area of Austin Energy. Austin Energy has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 14, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36288.

TRD-200805662  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 27, 2008

◆ ◆ ◆  
**Notice of Application to Relinquish Retail Electric Provider (REP) Certification**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 21, 2008, to relinquish a retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Notice of W Power and Light, LLC to Cease Retail Electric Provider Operations Pursuant to P.U.C. Substantive Rule §25.107(i)(8), Docket Number 36296 before the Public Utility Commission of Texas.

W Power and Light, LLC is requesting to relinquish its REP certificate. W Power and Light, LLC stated it is currently not providing service to customers, has provided prior notice and has refunded all monies owed to customers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 14, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36296.

TRD-200805715

## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Liberty, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Liberty Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Liberty. TxDOT CSJ No.0920LBRTY. Rehabilitate aprons; rehabilitate and mark parallel and cross taxiways and Runway 16-34; relocate electrical vault and add drainage improvements at the Liberty Municipal Airport.

The DBE goal for the current project is 6%. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate southwest apron, hangar access taxiways and concrete apron
2. Seal joints
3. Construct east side hangar access taxiway and pavement
4. Construct 10 unit T-hangar
5. Construct small public terminal
6. Reconstruct west apron
7. Replace rotating beacon
8. Extend utilities to east side for public facility
9. Relocate fuel farm to east side of airport
10. Install fencing
11. Upgrade signage
12. Terminal plan update

The City of Liberty reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Liberty Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas

78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 3, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-200805702

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 29, 2008

### Aviation Division - Request for Proposal for Aviation Engineering Services

Ector County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

The following is a listing of proposed projects at the Odessa-Schlemeyer Field during the course of the next five years through multiple grants.

**Current Project:** Airport Sponsor: Ector County. TxDOT CSJ No. 0906ODESA. Scope: Provide engineering/design services to: rehabil-

itate and mark RW 16-34, TW C, E, F, G, and hangar access taxiways; replace VASI w/PAPI-4s RW 16-34; improve drainage; reconstruct south and north terminal aprons; construct terminal building apron; replace signage.

The **DBE/HUB** goal for the current project is set at 10%. TxDOT Project Manager is Bijan Jamalabad, P.E.

Future scope work item for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate existing apron and reconstruct remaining apron.

Ector County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at

[www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm)

by selecting "Odessa Schlemeyer Field."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 9, 2008 at 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Delia Lopez Molina.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Delia Lopez Molina, Grant Manager at 1-800-68-PILOT at extension 4521. For

technical questions, please contact Bijan Jamalabad, at 1-800-68-PILOT at extension 4529.

TRD-200805704

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 29, 2008



### Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, November 20, 2008, at 9:00 a.m., in the Ric Williamson Hearing Room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 Texas Administrative Code (TAC) §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Brent Dollar, Government and Public Affairs Division, at 125 East 11th St., Austin, Texas 78701-2383, or (512) 463-8955 at least two working days prior to the hearing so that appropriate arrangements can be made.

Highway project selection information will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5063. Written comments may be submitted to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on December 22, 2008.

TRD-200805631

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 27, 2008



### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[www.txdot.gov/about\\_us/public\\_hearings\\_and\\_meetings/aviation.htm](http://www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm)

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200805630

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 27, 2008

### Public Notice - Creation of Specialty License Plates

Under Title 43, Texas Administrative Code, §17.28(i)(1)(D), the Texas Department of Transportation is required to publish notice of all tentatively approved specialty license plates for public comment. The department will accept comments on these specialty license plates until November 17, 2008.

The specialty license plate tentatively approved and open for comment is: LSU Alumni Specialty License Plate. This plate will be available to the general public and will not have qualifying restrictions. The license plate image may be viewed at:

[www.txdot.gov](http://www.txdot.gov),

keyword: plate vote. All comments will be considered prior to the final decision.

Please e-mail comments to

[tbelk@dot.state.tx.us](mailto:tbelk@dot.state.tx.us)

or write to Tammy Belk, Texas Department of Transportation, Vehicle Titles and Registration Division, 4000 Jackson Avenue, Austin, Texas 78779-0001. For more information go to [www.txdot.gov](http://www.txdot.gov).

TRD-200805703

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 29, 2008

## University of North Texas

### Public Notice - Award of Major Consulting Contract

#### Description of Activities Consultant Will Conduct:

The selected consulting firm is responsible for assisting the University of North Texas (UNT) and member institutions in developing and maximizing its federal facilities & administrative (F&A) rate proposal for submission to the Dallas Office of the U.S. Department of Health and Human Services, Division of Cost Allocation; and assisting the UNT and member institutions in the support of the development of a project plan designed to maximize UNT's F&A reimbursement rate. The firm is will support UNT's technical installation and reconfiguration of the Comprehensive Rate Information System (CRIS).

#### Name and Business Address of Consultant:

Maximus

11419 Sunset Hills Road

Reston, Virginia 20190

#### Total Value and Beginning and Ending Dates of Contract:

Value: \$140,000.00

Beginning Date: October 8, 2008

Ending Date: Shall remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to Maximus.

#### Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates - as requested by the department

TRD-200805588

Carrie Stoeckert

Assistant Director of PPS

University of North Texas

Filed: October 23, 2008



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).